



TRANSCRIPT OF DAY 10 – PUBLIC HEARING

PROFESSOR ELEANOR A BOURKE AM, Chair
MS SUE-ANNE HUNTER, Commissioner
DISTINGUISHED PROFESSOR MAGGIE WALTER, Commissioner
MR TRAVIS LOVETT, Commissioner
THE HON ANTHONY NORTH KC, Commissioner

WEDNESDAY, 24TH OF APRIL 2024 AT 2:00 PM (AEST)

DAY 10

HEARING BLOCK 6

MS FIONA McLEOD AO SC, Senior Counsel Assisting
MR TONY McAVOY SC, Senior Counsel Assisting
MS SARALA FITZGERALD, Counsel Assisting
MR TIM GOODWIN, Counsel Assisting
MS GEORGINA COGHLAN KC, Counsel for the State of Victoria
MS GEMMA CAFARELLA, Counsel for the State of Victoria

Transcript Produced by
LAW IN ORDER PTY LIMITED

ACN 086 329 044

T: 1300 004 667

W: www.lawinorder.com.au


LAW IN ORDER
Where work flows.

<THE HEARING COMMENCED AT 2:05 PM

MS McLEOD SC: Thank you, Chair.

5 **CHAIR:** Good afternoon. The Yoorrook Justice Commission resumes its hearings here in Robinvale into the land injustice that has happened in this state to our people. I would like to say a few words about this morning, we were out on Country for the first time speaking in front of Margooya Lagoon about water and I thank Brendan Kennedy very much for his words this morning. It was a very moving and very
10 appropriate space to be sitting in, and many, many things that are cultural to us crossed my mind.

This afternoon we have the minister - first minister to speak in a regional setting speaking to us, but before we go on, I would like to introduce the Commissioners
15 before we start. So I'd just like to say we have Commissioner Hunter on my left, Commissioner Lovett on the right, Commissioner Walter, and Commissioner North with us, for the record. I will now ask Commissioner Lovett to say a few words.

COMMISSIONER LOVETT: Thank you, Chair. I'd also like to acknowledge
20 Country, pay my respects to Elders past and present and future and recognise that sovereignty has never been ceded. This is the third week of Yoorrook's hearings into land, sky and water. Across the hearing block so far, the Commission has heard compelling evidence about the rapid expansion of squatters across Victoria and the violent dispossession of land that followed in its wake. On a scale unlike any other
25 European colony - colony - see, words are important - the injustice against First Peoples began with the theft of land, but it was not only dispossession of land; First Peoples were dispossessed of our water.

This was the belief that because the land was supposedly belonged to nobody, the
30 water belonged to no one either. When land was taken, the right to water went with it. But as some land has been returned to First Peoples through Native Title and other mechanisms, it has come back without water rights. In effect, First Peoples experienced a double - double-double dispossession. Across the hearings, Commissioners have heard evidence of the paltry water rights that exists for First
35 Peoples, so restricted that Traditional Owners who have legal rights to water are choosing not to use them, because of the benefits are so limited.

That says a lot. We've heard evidence about the system of granting water licences and how this doesn't work for Traditional Owners, because they would prefer to
40 leave the water in the stream so we can help care for Country.

Throughout Yoorrook's inquiry, we have seen time after time, story after story of how First Peoples care for Country, and that's when everyone benefits. It is appropriate that we are here on Country for today's hearing with the Water Minister, Harriet Shing, as part of Yoorrook's inquiry into land, skies and waters. In particular,
45 special to be here on Country, which is surrounded by three sides of the Murray River. The river is a lifeblood of the region. Earlier today, Commissioners and

Minister Shing were privileged to meet with - at the Margooya Lagoon, Tati Tati Elder, Uncle Brendan Kennedy, to hear what Traditional Owners have done to care for Country and the challenges that they still face. We saw the vast expansion of the lagoon and heard about this deep spiritual significance to First Peoples. Margooya, the ancestor creation, started the original Murray watercourse. The river flows out of the creeks, lakes and lagoons into Margooya. When there is no water, it has a devastating effect on Country and our culture and our people.

Uncle Brendan told us how First Peoples have cared for Country and water for tens of thousands of years in this area and how the colonial state made Country sick by diverting, restricting and manipulating water from moving naturally.

We were also told about the ongoing fight for water rights for First Peoples, particularly through the return of cultural flows. Cultural flows is an overarching model to address - one of those overarching models to address aqua nullius by returning water rights and management to Traditional Owners to improve spiritual, cultural and the natural environment.

I want to thank Uncle Brendan Kennedy for his profound and heartfelt evidence today. It has set the stage for evidence. We will now hear from Minister Shing. Thank you, Chair.

CHAIR: Thank you. Just before we have Brendan say a few words, I just want to pay my respects to Tati Tati, Wadi Wadi, Nari Nari, and the Mutti Mutti peoples. I pay my respects to any other Traditional Owners in the room, and I feel very uplifted being here on the river today. Counsel, you are ready to commence?

MS McLEOD SC: Yes, I - yes, I am, Chair, sorry. Could I invite Uncle Brendan to come forward to explain the significance of the objects of the totems behind you and in front of us here before we announce our appearances here.

UNCLE BRENDAN KENNEDY: Hi everyone. So what we have here, that is an expression of our cultural economy. These are our cultural valuables. We have our possum skin cloak, that is our self-determination cloak, one we are working with DEECA on. We have our emu eggs, we have our cultural materials, we have our (indistinct) bowl there made by cousins. So this is one way that we can - you know, Europeans have jewellery and a big car and a swimming pool and all that, but this is our - this is our cultural worth and our valuables. We have got the big oval-shaped artwork in the back there. That's myself and Vicki Couzens. We collaborated on the River of Language exhibition at Melbourne Museum. And these are the totems - I selected only five totems that we picked across all those languages, the river language.

Yeah, no, I just want to thank you for being here today, and this is really important for all our river mobs through here that you have come this far, the minister's here, to come up here to the far north-west of the state to look at, you know, water injustice for our people up here as well as right across the state. For us, ours is Pathangal the

pelican. But we also have (indistinct) the owl, Kani the snake, Denawi the sulphur-crested cockatoo, and that's the totem there of the Wam Wam red-tailed - I'll be wearing the red-tailed black cockatoo, and Kunuwar is the swan - the black swan. Thanks. And we have Pandyl the cod, that's here, he is the creator of our Millewa,
 5 our river, back in - back in the very beginning.

So yeah, thank you, everyone. Have a really good hearing, and we are going to sit here and watch and we know it is important to everyone across the state all Traditional Owners and all First Nations people for water justice and justice through
 10 the Yoorrook Justice Royal Commission, so thank you.

CHAIR: Thank you very much, Brendan. Counsel.

MS McLEOD SC: Thank you, Chair. Chair, I appear with Mr Tony McAvoy as
 15 co-Senior Counsel and junior counsel Ms Fitzgerald and Mr Goodwin to assist you. We offer you our acknowledgements of the Tati Tati original owners and all of the river people, the Wadi Wadi, Latji Latji, Mutti Mutti, Wamba Wamba, Nari Nari, Yita Yita, and others across the state connected to water. I offer my
 20 acknowledgements and respects to all ancestors and Elders.

MS COGHLAN KC: Thank you, Chair. I appear for the State of Victoria and for Minister Shing along with Ms Cafarella today. We too acknowledge the Traditional Owners of the land, the Tati Tati, the Wadi Wadi, the Latji Latji, Mutti Mutti, the
 25 Wamba Wamba, the Nari Nari and the Yita Yita. We pay our respects to Elders past and present and we further pay our respects to any First Peoples here today, and we recognise that sovereignty was never ceded.

CHAIR: Thank you.

MS McLEOD SC: Commissioners, if you don't mind, we will cover a little of the
 30 evidence that the minister covered out at the lagoon before moving on to new topics. So, Minister, thank you for attending. Would you please again, for the record, state your full name.

THE HON. HARRIET SHING: Harriet Claire Su Mei Wong King Shing.

MS McLEOD SC: And you are the Minister for Water?

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: You have given an undertaking to give truthful evidence. I just
 40 remind you of that undertaking.

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: You made some initials remarks out at the lagoon this morning.
 45 Would you like to make further opening remarks?

THE HON. HARRIET SHING: Yes, please, if I may. Good afternoon, Commissioners and counsel assisting, and to those who are here today or otherwise participating in or observing the work of the Commission. Thank you for the
5 opportunity to give evidence today and for the opportunity to be grounded in and connected to Country, while giving my evidence and perspectives close to and, indeed, this morning on such a significant waterway and water Country. Thank you too to the community and staff of the Commission, who have worked so hard to enable this to happen in this way.

10

I would like to begin as I did earlier by acknowledging the Traditional Owners of the Country upon which we are meeting: Mutti Mutti, Yita Yita, Nari Nari, Wadi Wadi, Tati Tati, Latji Latji and Wamba Wamba. I also wish to acknowledge and recognise the enduring connections of Traditional Owners to waterways and to water Country
15 right across Victoria. I pay my respects to Aboriginal leaders and Elders including those past and present from other communities and indeed those who are participating online, I imagine from quite some distance away. And I acknowledge and pay my respects to those emerging leaders whose work will continue the determination of generations past in advocacy, self-determination and better
20 outcomes.

20

Sovereignty has never been ceded. This is a fact that is never ignored or downplayed in its importance to my work. As I said earlier today, however, I grapple with the concept of sovereignty and imperialist notion of the acquisition of rights, the seizing
25 of rights by a measure of conquest. Where, for me, the resonance of a statement indicates it always was, always will be Aboriginal land Country and water, strikes a balance that recognises that, in fact, Western systems of law create a framework upon which Traditional Owners have for far too long been required to enter in order to have voice.

30

The very process of truth-telling wherever it occurs, but particularly here on Country, must be an enormously painful process. I can only imagine the grief, the frustration, anger and sense of loss that emerges again and again, including through this process and which is augmented as a result of ongoing dispossession and ongoing denial of
35 opportunity to be heard, respected and, indeed, able to make decisions within the realm of self-determination and of shared power.

35

My commitment in appearing before the Commission today is to actively listen, to respect this pain and anger and its origins, not to turn away from it, to hold space for
40 it, and to reaffirm my determination to contribute to healing and the actions that I undertake in the talking, the listening, and then and always the doing.

40

My commitment is to honour the telling of truth and to respect it as a long overdue and incredibly important process, while contributing to the substantive progress
45 toward better outcomes, outcomes that can endure, that can outlast, indeed, my position in a role like this.

45

I will do my best. But if I falter at any point today, if I do get it wrong, please know that this will not be through any intentional ill will or lack of respect. I am, as I said this morning, still learning. I am still determined to learn. There may be questions here today that I cannot answer because I don't immediately know the answer or the
5 answers. But I recommit to an ongoing discussion and dialogue so that answers can be provided in the talking, in the listening and in the doing.

To Brendan, it's been a privilege to hear you on Country this morning. You've been a vocal advocate for First Nations water rights as one of the many articulate voices
10 who have been calling for many years for the creating, shaping and improving of Aboriginal water policy and programs in Victoria.

I reflected on the voices of First Peoples, including through the work of the Commission, and I'm humbled by the dignity and determination with which they
15 speak of the trauma and dispossession of traditional lands and waters. I, in turn, am determined to work to ensure that their calls for justice, your calls for justice, are heeded through the work of the Commission and beyond.

As I've stated in my witness statement, I have the deepest respect for First Peoples' enduring cultural and spiritual connection to Country. I recognise it, I respect it, and I acknowledge it. This includes, as I have learned, waterways as the heart and veins
20 of Country, through which wellbeing and belonging and identity is carried. It includes the deep understanding and lived experience and wisdom that to have healthy waterways, river banks and adjacent landscapes is to have healthy Country
25 and healthy communities.

I often reflect upon the words of Aunty Margaret Gardiner, Wurundjeri Woiwurrung elder. She was a proud, passionate, determined voice for the Birrarung and integral to the introduction of the Wilip-gin Birrarung murrong Act and the Burndap Birrarung
30 burndap umarkoo. That work was informed and informed well by her statement that the river needs its lands. But the settler colonial state failed to understand the inextricable link between caring for land and water, and what that means in healthy Country and healthy communities.

Over the past two centuries, the dispossession of Traditional Owners over lands and waters in the state we know as Victoria has had a profound impact on our waterways. Water was only seen as a means for economic production, expansion and profit, and the construction of dams and weirs, as we know, altered the flow of water across this
35 Country.

Land was cleared and the nature and course of waterways and wetlands changed significantly. Rivers have been polluted and modified, wetlands have been drained, riparian ecosystems have withered in thirst, plants and animals rendered extinct,
40 cities and towns spreading over floodplains have disconnected from waterways.

I understand that the settler colonial conception of water as property is very different to the Traditional Owner concept of water and water ownership. This continues to be
45

reflected in our system of water management and entitlements today, which continue to disadvantage and cause harm and injury to Traditional Owners. I welcome the opportunity to discuss this today, to be accountable for it, to listen to contribute and not to turn away.

5

I also take this opportunity to apologise to First Nations people and communities for the hurt and loss of dispossession and of lack of recognition, for the lack of respect and visibility that you deserved and did not get, for the grief of seeing Country damaged or dying, for being the right to be on and to care for Country, for the enduring disadvantage that was never of your doing. I am so sorry for the many generations of longing for Country and the heaviest of burdens of grief and anger in advocacy and determination and pride that you have carried almost always on your own for something to change for the better. I am sorry.

10

In the first of many steps and actions to meaningfully act and learn by doing, the Victorian Government's Water is Life roadmap for Traditional Owner access to water is an important starting point and a continuation of work that has been defined, including in large part by the Echuca Declaration of 2007, as a strategy to undo the systemic and structural inequities that prevent Traditional Owners from accessing water and caring for waterways on Country. Water is Life is not, in and of itself, the answer as such, but it is a way to help government to understand the depth and the breadth of the problems and the questions and to make space for the answers and the actions that emerge with self-determination and a sharing of power. The nation's statements in Water is Life give voice to this official government strategy to the aspirations of Traditional Owners for cultural and water-related values.

20

25

I want to acknowledge that Water is Life is not an end point, and I also acknowledge that it is not universally accepted by Traditional Owners. It is, however, a starting point, and there remains significant work to be done by government to address centuries of systemic dispossession. I am committed to working with all First Peoples and my colleagues as well in the Victorian Government to make this change and to return enduring water and water rights to Traditional Owners. It is an honour, a significant responsibility, and a privilege to make this statement as part of the commission's Land Injustice Inquiry.

30

35

I appear before you today ready to answer all questions to the best of my ability, with openness, as is my commitment to this truth-telling process. I am also ready to listen and learn for the perspectives and knowledge shared through this process, as I am determined to make space for and respect the essential importance of redress for injustices in my position as Minister for Water. Thank you.

40

MS McLEOD SC: Thank you, Minister. You have prepared a witness statement dated 12 March 2024; correct?

45 **THE HON. HARRIET SHING:** Yes.

MS McLEOD SC: And are the contents of that statement true and correct?

THE HON. HARRIET SHING: Yes.

5 **MS McLEOD SC:** You should have, I hope, in your folder, a copy of your statement in front of you.

THE HON. HARRIET SHING: Yes, I do, thank you.

10 **MS McLEOD SC:** And for the Commissioners' benefit, it's behind tab marked B. Documents Relevant to the Minister, tab 1. In addition to your witness statement, Minister, the department submitted a request for information from the Commission. Are you familiar with that response?

15 **THE HON. HARRIET SHING:** Yes.

20 **MS McLEOD SC:** That appears behind tab 2, Commissioners, and various documents follow at 2A, B and C. Commissioners, I tender the minister's statement and the DEECA RFI response and annexures. I will do that now so those matters can be uploaded. Now, starting with your statement, Minister, you make a number of acknowledgements. Could I invite you to turn to page 3 and to read paragraphs 14 to 16.

THE HON. HARRIET SHING:

25 "Colonisation and the establishment of the State of Victoria has had long lasting, far-reaching and intergenerational consequences, including dispossession of First Peoples' Country and the living entities that constituted the waterways of Victoria. I acknowledge that water was taken from First Peoples and that First Peoples were denied and continue to be denied their ongoing and intergenerational rights and opportunities to care for Country."
30

"I acknowledge that as a result of the proclamation of sovereignty by the British Crown and its ownership of all lands of the colony, ownership and the allied right to make decisions about water was also and remains to this day vested in the Crown in right for the State of Victoria."
35

"I acknowledge as part of the adoption of the British legal system and systems of government, based as they were on British European assumptions, emphasis was placed on the economic value of water."
40

MS McLEOD SC: Thank you. And at paragraph 22, you acknowledge that since colonisation, First Peoples have been excluded from the management, allocation and ownership of water and water-dependent landscapes.

45 **THE HON. HARRIET SHING:** Yes.

MS McLEOD SC: I just want to cover a little ground that we covered out at the lagoon, Minister, by repeating six of the questions I asked you, or six or seven of the questions I asked you and having you confirm that evidence for the purpose of the live stream. Minister, you would accept that dispossession from lands and culture of First Peoples, as we have heard in terms of the early colonial history of this state, was and is unlawful? Yes.

MS McLEOD SC: Minister, do you accept that the destructive effects of this dispossession include dispossession of rights to and associated with water and waterways?

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: And that dispossession occurred on a devastating scale?

THE HON. HARRIET SHING: It did and it does.

MS McLEOD SC: Minister, you accept that this created enormous inequity in terms of access to and use of water?

THE HON. HARRIET SHING: It did and it continues to do so.

MS McLEOD SC: And that there has never been an accounting in monetary terms for waters taken from First Peoples?

THE HON. HARRIET SHING: That is correct.

MS McLEOD SC: These facts, Minister, do you agree, compel governments to secure the economic prosperity of First Nations peoples from their lands and their associated waters and other resources?

THE HON. HARRIET SHING: I do, and I would also say that economic prosperity is one measure of restitution and one measure of benefit and of recognition as we work toward redress.

MS McLEOD SC: Just before I turn to the history as set out in your witness statement, the history of dispossession, you offered to the Commissioners an apology this afternoon, noting the "damage, loss, grief, anger and pain felt by First Peoples in relation to this dispossession." And you undertook to be accountable for that. What does that mean to you in a broad sense? What does that accountability look like?

THE HON. HARRIET SHING: My accountability is borne out, I think, in a number of ways: firstly, in the opportunity for me to receive advice and to listen; secondly, in my accessibility and the importance of not being somebody who sits locked in an office in a way that means that conversation and direct dialogue, proposals and ideas about solutions to problems cannot be heard or conveyed directly. Thirdly, accountability can and should be measured by action. It should be

measured in a way that is transparent. It should be measured in a way that is consistent and able to be uniformly understood, so that over time, measures of progress can be seen and analysed and can form the basis for changes to the way in which things are done so that they can be improved. Making sure that problems or issues can be foreseen and prevented, and making sure also that in the work that I do, the importance of connection of First Peoples to Country in relation to water is well understood within government as part of whole-of-government decision making.

MS McLEOD SC: Thank you, Minister. You also referred to the return of enduring water and water rights. That water and associated rights are not currently guaranteed under our present legislative regime; is that correct?

THE HON. HARRIET SHING: That's correct.

MS McLEOD SC: Yes. So the return of enduring water and water rights would require legislative change?

THE HON. HARRIET SHING: There are a couple of things in that around different jurisdictions and the way in which, for example, we might see the Commonwealth entering the water market for the purpose of the acquisition of water which might include water for Traditional Owners. The Restoring our Rivers Bill, for example, passed last year went from \$40 million to \$100 million, the allocation of water for Traditional Owners. Again, it's about accountability and the extent to which that is actually able to be delivered. Legislation is one way in which water can be returned. There is also the system of entitlements and frameworks that enable the return of water as it relates to section 51 entitlements and licences and applications.

MS McLEOD SC: Section 51 of the -

THE HON. HARRIET SHING: Sorry, the Water Act. Sorry, I apologise, there is a lot of technical detail in water, yes. And indeed, to the way in which Traditional Owners are part of discussions through water authorities, through corporations, and through the work of government around living entity status and a range of other mechanisms to - to begin to address that power asymmetry.

MS McLEOD SC: So you've mentioned there had been Commonwealth responsibility in terms of the commitment to funding for water purchases: 40 and now 100 million.

THE HON. HARRIET SHING: Mmm-hmm.

MS McLEOD SC: You've mentioned section 51 of the Water Act, and you've mentioned the living entity status, which also requires a legislative instrument, or at least that is the method that has been adopted with respect to the Birrarung Yarra River; correct?

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: Okay. Now, can we turn to your statement, just to backtrack a little, at paragraph 31 of your statement on page 5.

5 **THE HON. HARRIET SHING:** Mmm-hmm.

MS McLEOD SC: So at paragraphs 31 through to 37, you outline how First Peoples have been excluded from the management, allocation and ownership of water and water-dependent landscapes. Could you give us an overview of how this occurred.

10

THE HON. HARRIET SHING: The proclamation of sovereignty was the starting point for systemic exclusion, and the creation and maintenance of the fiction as we now know it of terra nullius and, by way of further explanation of that, extends to water sovereignty.

15

MS McLEOD SC: Are you talking about a proclamation pre-statehood - Victorian statehood?

THE HON. HARRIET SHING: Initially from the Commonwealth.

20

MS McLEOD SC: Sorry?

THE HON. HARRIET SHING: From the Commonwealth as it relates to section 7 of the Commonwealth legislation.

25

MS McLEOD SC: Sorry, you're talking about 1901?

THE HON. HARRIET SHING: Yeah. And then as that relates to the operation of Victorian legislation, the wording of that legislation has persistently excluded Traditional Owners from the way in which water has been considered, and that comes back to the primary purpose of water having been considered to be economic in nature, that the idea of licensing and needing to apply for water invited a conclusion and invites a conclusion that it is there to be taken, that it is there and again the term "consumptive pool" is something that - that perhaps you have heard but that will no doubt come up, that water is there to be consumed.

35

MS McLEOD SC: Can I just take a step back.

THE HON. HARRIET SHING: Yes.

40

MS McLEOD SC: Pre-Federation and the creation of the Australian nation. Go back to colonial times. Is it correct that upon the proclamation of sovereignty and Crown ownership of the lands of the colonies, the Crown assumed control of waterways and waters?

45

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: And the effect of this was that the Crown then assumed to itself the ability to distribute parcels of water allocated per hectare of land, giving settlers comparable access to their ability to make a living from those waters?

5 **THE HON. HARRIET SHING:** Yes, that was the case. And in doing that, we saw the deprivation of First Peoples' opportunities and, indeed, the intergenerational, ongoing, enduring and persistent damage and disadvantage as a result.

10 **MS McLEOD SC:** So we've heard the evidence that those early squatters in Victoria took those lands unlawfully. Just to be absolutely clear, they took those lands unlawfully and then acquired not only those lands but the water and water rights that went with them, dispossessing First Peoples of their rights to use those lands and waters. Correct?

15 **THE HON. HARRIET SHING:** Yes. Upon the proclamation of sovereignty, the Commonwealth sought to provide an environment and an authorisation for land and for water to be taken.

20 **MS McLEOD SC:** Sorry, you are - just being a lawyer here, but when you use the word "Commonwealth", we're talking about pre-Federation?

THE HON. HARRIET SHING: Yes.

25 **MS McLEOD SC:** We're talking about the colony -

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: Initially the district of Port Phillip -

30 **THE HON. HARRIET SHING:** Yes.

MS McLEOD SC: Within the colony of New South Wales, later the State of Victoria; correct?

35 **THE HON. HARRIET SHING:** Yes.

40 **MS McLEOD SC:** From the late 1800s to the late 1970s, do you accept that governments in Australia focused on water for urban supplies, for regional growth, for irrigation and mining largely?

THE HON. HARRIET SHING: Yes.

45 **MS McLEOD SC:** Water being necessary for the extraction of gold and other minerals. And that there was increasing competition for water and water rights?

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: So I'm looking here at paragraph 34.

THE HON. HARRIET SHING: Yes.

5 **MS McLEOD SC:** So that you can follow where I am going.

THE HON. HARRIET SHING: I can.

10 **MS McLEOD SC:** Water markets were gradually introduced in the 1980 and 90s, so more than a century later, to encourage more efficient irrigation water use through trade, and the process of separating water entitlements from land began in Victoria in 2007, you say in paragraph 37.

THE HON. HARRIET SHING: Yes.

15

MS McLEOD SC: Are you aware of the genesis of that move to separate water from land - the rights to water from land? Are you aware of that background?

20 **THE HON. HARRIET SHING:** The national water initiative was part of the - the efforts to create easier measures for primary producers, for irrigators, to access water, again, within the landscape of co-modified approach to consumption, to take and to economic prosperity. We then saw that there was, in the course of the work in 2007, a range of processes that in effect made it more complicated, more difficult and impossible, in fact, for First Peoples to participate based on the purpose for
25 which water was being made available, and that that occurred without discussion or consultation or negotiation or involvement or respect for First Peoples, and in fact amounted to, as you've said, Commissioner, a constant theme of dispossession and disconnection from Country.

30 **MS McLEOD SC:** So we have the original sin, if you like, of taking land from First Nations people and declaring that it belonged to settlers and other purchasers?

THE HON. HARRIET SHING: Yes.

35 **MS McLEOD SC:** By the Crown.

THE HON. HARRIET SHING: Yes.

40 **MS McLEOD SC:** Then we had the introduction of water markets, allocation of waters, and then more recently in 2007, separation of water entitlements from land. None of those steps occurred with the agreement of or in consultation with First Peoples?

45 **THE HON. HARRIET SHING:** That is correct.

MS McLEOD SC: The current legislative framework is the Water Act 1989. The other relevant legislation includes amendments to that Act in 2019 and the Traditional Owner Settlement Act 2010 to an extent; correct?

5 **THE HON. HARRIET SHING:** Yes.

MS McLEOD SC: The current framework of the Water Act echoes those early statutory schemes asserting the Crown's right to use, flow and control all water in a waterway and all groundwater. Correct?

10

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: For example, the Act is described as an Act - sorry not the Water Act, an Act introduced in 1886 is described as 'an Act to make better provision for the supply of water for irrigation and also for mining and manufacturing and other purposes.' That's an 1886 Act, which describes, at section 4:

15

"The right to the use of all water at any time in any river, stream, watercourse, lake, lagoon, swamp or marsh shall, for the purposes of this Act, in every case be deemed to be vested in the Crown until the contrary be proved by establishing any other right than that of the Crown to the use of such water."

20

So from 1886 at least, we had a reverse onus on any person seeking to assert a claim to water under section 4 of that Act; correct?

25

THE HON. HARRIET SHING: Yes, but in addition to those legislative barriers and that reverse onus, there was the cultural disrespect and lack of opportunity to even begin a conversation, so that in practical, in operational, in cultural and in legal terms, that opportunity was denied.

30

MS McLEOD SC: Well, First Nations peoples' laws, customs and practices, their management of water, their dependence on water, their celebration of the spiritual nature of water, was not even a consideration -

35 **THE HON. HARRIET SHING:** No.

MS McLEOD SC: - under this legislation, and it's still not.

THE HON. HARRIET SHING: Well, it was specifically not. I mean, in terms of the way in which water is conceived under colonial systems of law, it is not and has not been contemplated that water would not have an element of commodified use. The idea that water is a recourse - we have referred to natural resource management. In every part of our language, we talk about the use and deployment of water for purposes that include very specifically economic participation, growth and opportunity. Through that lens, we see a really significant departure from many of the defining characteristics of First Peoples' connection to water Country and to waterways.

45

COMMISSIONER WALTER: Excuse me, can I just ask, I'm just a bit intrigued, because we are saying it still doesn't reflect that.

5 **THE HON. HARRIET SHING:** Yes.

COMMISSIONER WALTER: And yet in 2004, it says in your statement, 46, launched Water our Future, in which - the plan referred to the cultural value of water for First Peoples. That was 20 years ago.

10

THE HON. HARRIET SHING: Yes.

COMMISSIONER WALTER: So are you saying that hasn't changed in 20 years since - so that was done, but what has flowed from that?

15

THE HON. HARRIET SHING: So the cultural value of water is then again something which has moved into other work, such as the Gippsland and central region sustainable water strategy, Water is Life. There are a range of frameworks - I thought we were talking about legislation, but, yeah, I appear to have misunderstood.

20

COMMISSIONER WALTER: Sorry, I am just struck by just how long that was, that was all.

THE HON. HARRIET SHING: Yes.

25

MS McLEOD SC: Just staying with the development of the legislation, there was a Water Act introduced in 1905 in similar terms which provided:

30

"The right to the use and flow and to the control of the water at any time in any river, creek, stream or watercourse and in any lake, lagoon swamp or marsh shall subject only to the restrictions hereby in after provided and until appropriated under sanction of this Act or some or future Act of Parliament."

35

So in other words, this Act sought to assert a Crown right to this water absolutely.

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: Correct?

40

THE HON. HARRIET SHING: Yes.

45

MS McLEOD SC: There is a recognition in the acceptances that you have - and the agreements that you've made in your evidence so far, I suggest to you, that First Peoples did not ever cede or sacred, incontrovertible and undeniable right to waters in this state.

THE HON. HARRIET SHING: Absolutely.

MS McLEOD SC: Now, just staying with the overview of the water law framework. But before I do that, I might just bring up some maps so we know what water we're talking about. Thanks. Could we bring up, please, the map, if the operators have it, of
5 Victorian waterways and rivers.

THE HON. HARRIET SHING: I must apologise in advance, my eyes are not too great. In the event -

10 **MS McLEOD SC:** There is a screen.

THE HON. HARRIET SHING: Okay, if I can turn around, that would be good.

15 **MS McLEOD SC:** I can't read that writing from here; I might have to lurch towards you. That is a map we have been provided for by the department of Victorian waterways and rivers; correct?

THE HON. HARRIET SHING: Yes.

20 **MS McLEOD SC:** So major rivers obviously are thicker on that map, and we see most of the rivers in Victoria run south to north towards the Murray River, aside from some near the coast.

THE HON. HARRIET SHING: Yes.

25 **MS McLEOD SC:** Correct? Could we bring up the next map which is coloured with the overlay of the registered Aboriginal parties. So in Victoria to date, the coloured sections reflect the rights asserted and recognised by registered Aboriginal parties to areas covering their traditional lands; correct.

30 **THE HON. HARRIET SHING:** Yes.

MS McLEOD SC: And without asking you to identify each of those areas particularly, what is the nature of those rights? Are they to take unlimited water, are
35 they to use for traditional purposes only, or do we need to look at each RAP area in detail?

THE HON. HARRIET SHING: I - I think we would need to look at each RAP area in detail. There is variation, and there's variation, for example, between the southern
40 and northern parts of the state, the operation of licences, the return of water to Traditional Owners under some very limited circumstances, and the way that the catchment management framework sits over the top of that.

MS McLEOD SC: So today we're in an area without recognition bordering on the
45 Yorta Yorta RAP recognition area; correct?

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: And so does that mean that there is no agreement for the use of waters in those blank areas with Traditional Owners?

5 **THE HON. HARRIET SHING:** It means that there can be an agreement, as there can be an agreement across the state, depending on how those processes of engagement, discussion and resolution apply, whether that is through licensing frameworks or the return of environmental water - sorry, environmental water, I mean water for cultural purposes.

10

MS McLEOD SC: Riparian water or water that flows along rivers, if I just stay with that, obviously flows across the borders of these recognised RAP areas.

THE HON. HARRIET SHING: Yes.

15

MS McLEOD SC: Is there arrangements between the different RAPs about the sharing of waters in those rivers?

20

THE HON. HARRIET SHING: The process of - the process of self-determination is grounded in government not, in these instances, prescribing the way in which sharing arrangements need to take place. It is then about making sure that when and as those processes are negotiated and agreed, that they can be supported by government and resourced by government, but there are such limited circumstances in which this water is available that I - I don't want to give anyone the impression that this is a large-scale set of operations in place, because it's not. I mean, part of the - part of the reason that I am so determined to have this conversation in a really frank way is because we haven't - we haven't returned water. There isn't water in any significant volume for Traditional Owners and therefore the challenge of where and how those agreements operate is, at this point in time, almost entirely speculative.

30

MS McLEOD SC: Okay.

35

COMMISSIONER LOVETT: Minister, what are some of the reasons why water hasn't been returned to Traditional Owners? You've got the policy framework and the architecture in 2016; you had Water for Victoria. So I think earlier on, Minister, you referenced Water is Life was a start, but it wasn't the start because we'd heard a little bit earlier, there was \$10 million committed by the Andrews Government at that point in time, \$5 million to develop an economic roadmap for reform - we'll get to that a bit later, we will come back to that. But 4.7 million, and that was dedicated to, I think, funding the Aboriginal water unit internally in DELWP at the time, and also further moneys to undertake Aboriginal waterway assessments and a few other things. What are the barriers right now to returning water to our people, whether it be RAPs or non-RAPs?

45

THE HON. HARRIET SHING: At the outset, I didn't mean to misspeak before, so I think when I said Water is Life is a starting point beyond the work that has already happened to date. So I don't want to downplay the work that has already happened.

And, you know, such a volume of work by First Peoples advocates who have been tireless in their efforts to make sure that issues and problems are understood and that governments are required to address them. The barriers, I think, are grounded in systems that from the very start have not acknowledged First Peoples' connection, and that from that premise, the entire system of regulation that has evolved around it has been characterised and, I would say, plagued by that starting point. And so when we come to the work of trying to unpick the operation of those systems which, as I said earlier, almost could not have been designed more perfectly to exclude Traditional Owners, we need to - we need to address the systems of determining rights.

COMMISSIONER LOVETT: Can I jump in.

THE HON. HARRIET SHING: Yeah, of course.

COMMISSIONER LOVETT: What are your expectations of the system in being able - to us to be able to achieve the recognition and the rights? What are your expectations on the water system?

THE HON. HARRIET SHING: In order to - in order to do better?

COMMISSIONER LOVETT: Yes.

THE HON. HARRIET SHING: Reform. And reform takes many forms. Whether that's - and a number of contributions to this process, it talked about where the intersections between environmental and cultural water exist, about reducing the burden, the cultural load, and - and, you know, within government, the cultural deficit that exists, the stretch in resourcing, the lack of opportunity for First Peoples who are so stretched because of the need to be across so many different things, that burnout is a really common problem. So it's resourcing, it's reform. It's also about changes to regulation, to the way in which licence applications and entitlement processes are managed, to make that easier, to remove those barriers which are there, as I said, at every turn.

COMMISSIONER LOVETT: And your expectation as the Minister for Water would be that you're expecting the system to reform to enable our people to do that?

THE HON. HARRIET SHING: Yes.

COMMISSIONER LOVETT: I just want to make it clear.

THE HON. HARRIET SHING: Sorry. Yeah, no, absolutely.

COMMISSIONER LOVETT: I want to understand that. I really want to make it really clear, considering all the advice that we get, that, you know, we have a lot to consider in this Commission over many different areas. Obviously we are here to talk about water today. And we hear about - we've heard from Uncle Brendan today. We

have heard from Traditional Owners across the state that we have engaged with extensively leading into those hearings about the continuing barriers and how stretched we are and so forth.

5 But the issue is, we're not seeing the reform, we're not seeing the changes and we are not seeing our water returned at an expedited rate we would expect. Again, 2016 was about, what, eight years ago? I was going to give a language word there, but eight years ago. We have been waiting a long time, minister for reform to occur, and there is a lot of barriers, and in particular one of the barriers that's been articulated to us is
10 the public service and bureaucrats and the barriers that bureaucrats put up as well. So I don't know if you have anything else in the reform space to share particularly in response to that.

THE HON. HARRIET SHING: I'll start perhaps with your final comment on the
15 public service. I think that there are many people within the public service whose views and, I think, values have changed and changed significantly in the last few years. I don't think that's universally the case, but I do think that the development of values within departments, within DEECA, as - it used to be DELWP, now DEECA, the work to require through statements of obligations or through planning and
20 engagement with the environmental water holder, employment opportunities, the people who sit on our boards and in management positions are beginning to be informed by - from a non-indigenous perspective, better understanding not from a First - not from a lived experience, but better understanding of systemic barriers. And I think that while there remain so many barriers for First Peoples in being part
25 of that work, being inside the tent, as it were, there is effort going into making that pathway easier.

I think we also need to perhaps look at the challenges we've had in systems that have been defined - again, I talk about language a lot, but I think it is really important,
30 where the systems are defined by language which begins from - which has a starting point of exclusion, that everything in the system of ownership and of rights-based frameworks, whether they're in legislation or in regulation or in operation, where that's excluded First Peoples' voice and connection, that means we have a big job to try to unpick that.

35 And I think to the credit of so many people who have been involved in this work, whether that's through, as I referred earlier to the Echuca Declaration and the advocacy and discussion that surrounds that and continues to that time, to the work, again, with the Commonwealth around what it means to engage beyond borders of
40 states, that we are unpicking that, and that this is almost akin to a boat that has been going backwards. Stopping that boat from going backwards takes a lot of energy and a lot of effort. But you won't see forward action until you've actually brought it to a halt and you can start to move. The movement forward is really slow.

45 **MS McLEOD SC:** So, Minister, you mentioned the public service values there and the fact that they're changing. You would accept that ministers - successive ministers

set the policy - and the policy parameters and the tone within their relevant departments?

THE HON. HARRIET SHING: Yes.

5

MS McLEOD SC: Yes. Just staying with -

THE HON. HARRIET SHING: Well, I said that they can inform it. I don't think that they can operationalise it. I think that there can be expectations that are really clearly understood, but I think in terms of the day-to-day, there is not the capacity other than to set a framework.

10

MS McLEOD SC: And certainly senior appointments are within the fiat of the minister of the day?

15

THE HON. HARRIET SHING: Yeah.

COMMISSIONER LOVETT: Just on that, just on senior appointments, do we have any Aboriginal - people who identify as Aboriginal and/or Torres Strait Islander in your executive in the water and catchments group?

20

THE HON. HARRIET SHING: Within the executive. Can I take that on - perhaps during a break, if I can get you that information.

COMMISSIONER LOVETT: Yes.

25

THE HON. HARRIET SHING: Thank you.

MS McLEOD SC: Commissioner North.

30

COMMISSIONER NORTH: Minister, can I just ask you this. I gather from what I've heard from you that you are intensely aware of the daily hurt, that the feeling of exclusion from water justice is occurring in the indigenous community in Victoria now?

35

THE HON. HARRIET SHING: Yes, and I think it's emblematic of pain felt every - in so many ways, in every way imaginable, yes.

COMMISSIONER NORTH: That being the case that means - and I ask whether you accept this or not, this is not a theory, a theoretical thing. It is like Uncle Brendan described this morning: this is an everyday hurt that is felt across the indigenous community by many people. Is that -

40

THE HON. HARRIET SHING: I would say that it appears from my conversations that it is an ache at its easiest.

45

COMMISSIONER NORTH: Well, does that also suggest, would you accept, that the need for reform as you articulated it is an urgent issue?

THE HON. HARRIET SHING: Yes.

5

COMMISSIONER NORTH: And that being the case, then shouldn't we as the Yoorrook Commission look to actions that can be taken in the short term, not going back to 2004, to remedy some of the major injustices?

10 **THE HON. HARRIET SHING:** I think it's ongoing work. I, think yes, we should be looking at urgent work now and urgent work into the future. I don't think the sense of urgency can ever not be part of this conversation, because we have so much healing or ground to make up given what's happened and given where we are.

15 **COMMISSIONER NORTH:** But "urgent" means something needs to happen, not be talked about, something needs to happen within the short term, doesn't it?

20 **THE HON. HARRIET SHING:** Things need to happen, but I think talking - I think work - I think the engagement is really important around that, and when we consider - when we consider that - that we are talking about isolation and exclusion from the way that systems have been developed, to impose another system without that engagement would be to double down on the problem.

25 **COMMISSIONER NORTH:** But the trouble is, Minister, is we have heard endlessly in these hearings about consultations and engagements which have served only - well, have served, at least in part, to delay this urgent action. We've heard about frameworks, principles, pilots, and on they go. And really, at least from my point of view, what I would be interested to hear is what actual outcomes can we reasonably expect, say, within 12 months or two years, given you've accepted that
30 this is a problem that is felt by many people in the indigenous community daily and is in need of urgent resolution, then the time is over for too much more talking, frameworks, principles, pilots. And we're at a point where, for the Commission to be at all credible to the indigenous community, it requires us to be able to say, "Well, the minister is confident that in three months' time, in six months' time, in nine
35 months' time, there will be a doubling of, for instance, indigenous membership of catchment management authorities, or that there is a scheme which will deliver water within six months." Because otherwise what you've said about urgency and deep-felt hurt really goes nowhere, doesn't it?

40 **THE HON. HARRIET SHING:** I think that action is something I spoke about earlier in relation to accountability, and that accountability requires that transparency. It requires outcomes to be able to be understood and understood uniformly. I think that outcomes are as much about people and about removing barriers to engagement as anything else. Where we are - where we are creating
45 pathways for increased representation on boards, that's - that's progress. Where we are creating opportunities for resourcing, it's around \$39 million that has been

allocated through to the Traditional Owner framework, at least \$23 million of that directly to Traditional Owner corporations and groups.

5 We also need to make sure that there is water. So water, in - in the use that it is desired by Traditional Owners, is absolutely why we are doing this. There is no denying the capability of the First Peoples who are involved in this work, but it's about capacity, and without building that capacity, without building those pathways, it becomes really difficult to sustain that work, because people burn out. Because we need to make sure - again, when we are talking about intergenerational change, we
10 are providing opportunities for emerging leaders to come into the system, to have voices at the table, to deliver water on the ground.

COMMISSIONER LOVETT: Minister, you talked about accountability earlier.

15 **THE HON. HARRIET SHING:** Yes.

COMMISSIONER LOVETT: Can you articulate to us what - one, what you mean by that, but also how the sector, the water sector and the ecosystem of the sector, is responsible and accountable to you as the minister?

20 **THE HON. HARRIET SHING:** I - so the sector. What I might start - so the framework of Water Corporations and catchment management authorities is also which is perhaps a useful context for this. We have a system of letters of expectations and statements of obligation that entities are required to meet around -
25 that might be guaranteed levels of service. It might be engagement across a range of metrics including the way that data is gathered and - and kept secure. It is also then about making sure that in this framework of accountability to me, that First Peoples work and progress is set out, that it is then recorded that I can measure and determine it, and that, for example, in the work of calling for expressions of interest on boards,
30 we can do more and do things differently to create pathways for people to come forward. That's - that's sort of one example.

COMMISSIONER LOVETT: Who issues those statements?

35 **THE HON. HARRIET SHING:** The statements of obligation?

COMMISSIONER LOVETT: Or expectations.

40 **THE HON. HARRIET SHING:** I do. I do.

COMMISSIONER LOVETT: You do.

THE HON. HARRIET SHING: Yes.

45 **COMMISSIONER LOVETT:** Okay. So how is the system - okay, and do - does the sector report to you ultimately? So if you make a decision, do they have to respect that decision and implement that decision?

THE HON. HARRIET SHING: There's a couple of - again to the complexity of the system. There's a couple of quirks to this. Water authorities, they have a measure of distance from government. They make decisions under the legislative framework.
5 They're ultimately responsible to me under the Act. So again, if you think about the level of complexity and, you know, blockage -

COMMISSIONER LOVETT: Oh, we know about it.

10 **THE HON. HARRIET SHING:** Yeah. That is just one of the examples of the arm's length approach that is taken in water management between me in my position as Water Minister and what happens to operationalise the commitments and the obligations of water entities on the other.

15 **COMMISSIONER LOVETT:** In the context of the Act, when was the last time it was updated?

THE HON. HARRIET SHING: The Act -

20 **COMMISSIONER LOVETT:** The Water Act 2009.

THE HON. HARRIET SHING: That relates to -

25 **MS McLEOD SC:** 2019.

THE HON. HARRIET SHING: 2019, I believe, yes.

COMMISSIONER LOVETT: 2019. And that was the same year, or at the same time that it was enshrined in legislation, the recognition and management of
30 Aboriginal values.

THE HON. HARRIET SHING: Yes.

35 **COMMISSIONER LOVETT:** Do you think that that's lived up to its expectations?

THE HON. HARRIET SHING: I have a difficulty with the term "recognition" where it doesn't translate into action, which - which I think has happened and continues to happen. This is - this is actually also symptomatic of a number of things in legislation where we have seen where there have been frameworks set out that
40 require consideration of First Peoples' rights and interests before making a decision. That doesn't mean anything beyond that a matter can and should be considered. So, you know, the extent to which that's a meaningful outcome depends upon the will, the culture and the resourcing behind that work. It requires the will to actually look at how things can happen rather than why they can't.

45 **COMMISSIONER LOVETT:** And that's the - are you saying that's the will from the public service and also the sector? Not Traditional Owners. The will's there, by

the sounds of it; we have heard it loud and clear. The will is there, the want is there, the expectation is there, but where's the barriers coming from?

5 **THE HON. HARRIET SHING:** I think the will is - I absolutely agree with you, just to be very, very clear. The will is there from First Nations. The systems are an enormous barrier, and I don't - I am not duck shoving, what I am, though, saying is that you can't imagine a system more perfect than (audio cutout) of decisions over generations.

10 **COMMISSIONER WALTER:** (Indistinct) by the states?

THE HON. HARRIET SHING: That's right. And that was imposed -

15 **COMMISSIONER WALTER:** (Indistinct) by the states?

THE HON. HARRIET SHING: From that very exercise of power of sovereign control.

20 **COMMISSIONER LOVETT:** I guess what I am reading and paraphrasing or using my own words, it is not living up to expectations. So do you see this is an opportunity to also reform the Act?

THE HON. HARRIET SHING: Yes, I do.

25 **COMMISSIONER LOVETT:** To strengthen it?

30 **THE HON. HARRIET SHING:** I do. But in reforming the Act, I think legislation is one part of it. I think also we have a number of processes in train in Victoria, whether they relate to the work of the First Peoples' Assembly, to Treaty, the - the reform of an Act involves a change to a system which is, as we've discussed, faulty from its bones in so many ways.

COMMISSIONER LOVETT: But that is the system -

35 **THE HON. HARRIET SHING:** Yes.

40 **COMMISSIONER LOVETT:** - that guides and regulates the sector. So if we are not, as a people, able to penetrate and change and update the Acts to further enshrine our rights and our expectations in the future, Minister, how are we ever going to be able to see systematic change? And our jobs here on this truth-telling Commission is to provide systemic recommendations for change. So I'm kind of - just trying to grapple with - yes, legislation is one mechanism, but it's a mechanism that has overregulated our people since colonisation, and it seems to be that everyone else gets, you know, a free ride here and a free ride there, but when it comes to our people
45 we are micromanaged down to a tee and shut out of every single system. We are yet to hear in this Commission, and we have covered many topics about where our people are able to thrive, and we keep hearing a lot of sentiment around, "Oh, we

want to do this and we want to do that." But we are not seeing it and we are not hearing it.

5 So the Act is very important to a lot of people, because it does and it has excluded us and it shuts us out of being able to generate our future rights. It is not the only mechanism; I do want to make that clear. But that's where you see change. That is where the sector, and I asked the question a little bit earlier and you articulated it that they are governed by the Act. And if we aren't penetrating that Act and being enshrined in it in the way our people feel the need and want to be enshrined in that
10 Act, then how do we really - we are just relying on goodwill. And it's got to go beyond goodwill to pick up what you are saying, it's got to go beyond goodwill. We have fallen behind. Our people are dying in custody, and our children are being taken away. I am not going to go over that, but how do we break the cycle? We heard earlier, \$287 billion extracted from gold in this State of Victoria, and TOs have seen
15 not a dime of it. So how do we penetrate the system?

THE HON. HARRIET SHING: I think that legislation is something that we need to think expansively about. To come back to the power of the Echuca Declaration of 2007 and the changed - the advocacy for a change in understanding of what cultural flows and spiritual and cultural connection to water means and a call to arms, a call to action for governments that we've seen a range of commitments. I agree that those
20 commitments mean nothing until they result in something.

I also note a number of contributions to this process and to comments made just this
25 morning about environmental water being key to the way in which we can be better and can be better in a way that is water on Country, and water control and operation and management, but also what that looks like in a situation of a combination of a transfer of power in self-determination and shared power within an existing system, namely a legislative framework, if that perhaps gives you some context. So by no
30 means am I saying that legislation is not saying that is part of this, I am - I am agreeing with you.

COMMISSIONER LOVETT: And if you are agreeing -

35 **THE HON. HARRIET SHING:** Yes.

COMMISSIONER LOVETT: Can you articulate that you would expect Traditional Owners to be working alongside you in developing any changes that may impact their lives in the future?
40

THE HON. HARRIET SHING: Not just alongside government. Again, it's the distinction between consultation and participation on one hand and what it means for the empowerment and facilitation of decision-making capacity because the capability is there. That's also something that needs to be guided by and informed by directly
45 by First Peoples. The nations statement in Water is Life, I note and I just want to, again, restate, that is not a process that is uniformly accepted, but the nation statements are a really important part of what co-design, what shared power might

look like in reform of the way in which water is understood and managed and - and used.

COMMISSIONER LOVETT: So Traditional Owners will work with you on that?

5

THE HON. HARRIET SHING: I would welcome the opportunity to work, again, with Traditional Owners. But it's also - but my work is also for Traditional Owners. This is where, again, in addressing that power asymmetry, the commitments that I have made in this job, that I have put on the record here today about wanting to do better, are about unpicking those systems. And this what I mean about progress. If progress is about unpicking systems to enable participation in and meaningful participation in a framework like legislation that gets those outcomes, then that is part of that work too and this is where, again, the opportunity to receive advice and feedback. As I said, I'm not always going to get it right; I'm frequently going to get it wrong. I need to continue to learn, and that is that advisory process as well.

10
15

COMMISSIONER LOVETT: Thank you.

MS McLEOD SC: I just want to follow up with one of those threads, Minister, paragraph 39, there's mention of the amendments in 2019 to the Water Act.

20

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: Which require consideration of various things. They don't mandate anything, so consideration of cultural values, consideration of opportunities to provide for those values and uses, consideration of cultural values, that's the extent of it, consideration?

25

THE HON. HARRIET SHING: Yes.

30

MS McLEOD SC: Correct?

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: That's really inadequate in terms of the sort of empowerment we're talking about, isn't it?

35

THE HON. HARRIET SHING: Well, consideration, I liken it to the way in which I think First Peoples have been too often treated as stakeholders, and it's not a stakeholder landscape because that actually says that a decision can be proposed and that input can be provided without necessarily any kind of meaningful - not a guarantee but an understanding that there will be a power to influence that decision in a meaningful way.

40

MS McLEOD SC: Yes.

45

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: So we really need to talk about partnerships rather than stakeholders?

5 **THE HON. HARRIET SHING:** Well partnerships amongst other things. I think partnerships are one species.

MS McLEOD SC: At least.

10 **THE HON. HARRIET SHING:** Yes, yes, yes.

MS McLEOD SC: Perhaps in some cases even a veto.

THE HON. HARRIET SHING: A veto. I'm not sure what form that would take.

15

MS McLEOD SC: We will come to the detail. Can we just bring up that map again just for a moment, the RAP coloured map of the waterways. The next one. Thank you. I just want to be clear - it's the next one with the registered Aboriginal parties. That's the one. If we can zoom in on that map a little bit.

20

THE HON. HARRIET SHING: Thank you.

MS McLEOD SC: For me too. You see below Swan Hill, the Avoca River, currently on land with no RAP. If that - the head waters of that river are down towards Ballarat - we just zoom out a little, thanks. We just zoom out, so make it - yes, thank you. Dja Dja Wurrung Country. At the moment, whatever rights that RAP provide in relation to water cover the upper reaches of the Avoca River, and then there is no RAP in relation to the lower reaches as the river runs into the Murray. Is that how I understand that map?

30

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: Yes. If there were to be a registered Aboriginal party claim over the Avoca River lower reaches, towards Swan Hill, would you anticipate that the groups adjacent to each other along the watercourse would need to get their heads together to negotiate with government as to who takes what? Because rivers of course flow from top to bottom, and we know from hearing about river Country up here, the clans traditionally provided for sustainable living, mindful of each other's rights and the rights of their neighbours further downstream. So just looking at that map, is the government expecting adjacent or contiguous groups to negotiate with each other about use of water, or is that not even in the thinking at the moment?

40

THE HON. HARRIET SHING: It is in the thinking, but the execution of this process, I think, will differ depending on where you are in the state, who the parties are, what the history is, the extent to which there are already informal agreements in place.

45

MS McLEOD SC: Does it depend to any degree upon the resourcing or wherewithal of those groups within those river courses?

THE HON. HARRIET SHING: It absolutely depends in significant part on
 5 resourcing, on, again, capacity, on the extent to which it has been done before, and if
 an entity - sorry, if a RAP has done this before, then again, there will be a capacity to
 do that with more speed and perhaps a more defined path to an outcome,
 operationally from a resourcing perspective with funding and, again, with a
 10 framework that is agreed on the ground on Country. Because unless there is
 agreement on Country, what we do to set the framework for outcomes doesn't deliver
 on what it is that is wanted.

MS McLEOD SC: Right. So for those areas where there is no RAP, how does the
 15 government ensure the wherewithal and resources of those groups and their ability
 and standing to negotiate for their water rights from those - those surface water
 sources?

THE HON. HARRIET SHING: Yeah. So - so there are a few elements to this, and
 again, there is a significant ad hoc way that support is provided. It may come through
 20 CMAs, it may come through the work -

MS McLEOD SC: Explain the acronym.

THE HON. HARRIET SHING: Sorry, I beg your pardon, catchment management
 25 authorities - water authorities, I should say, and those partnerships in community.
 There are a lot of interlacing relationships, particularly in rural and regional Victoria
 around understanding where various positions are and how they may change,
 because they frequently do change. So this is about the work that government needs
 to do, not only to continue to resource catchment management authorities and water
 30 corporations, to make sure support is there for First Nations to be able to find the
 time and have the - the opportunity to - to be at the table.

MS McLEOD SC: And build the expertise.

THE HON. HARRIET SHING: Absolutely build the expertise.

MS McLEOD SC: So we have heard evidence that the RAPs in some ways deliver a
 number of benefits in terms of the seat at the table, ability to seek funding and so on.
 Those groups who may have been dispossessed, moved off their lands, massacred,
 40 suffered other acts of gross violence, may be less able, because of those acts to stand
 up and say (audio dropout).

THE HON. HARRIET SHING: I think the provision of information is very
 important, being able to provide detail about when and how water may become
 45 available for Traditional Owner use. And I say "may become available" in the
 context of an allocated or the allocated system in particular in the north, but also to

make sure that there is ongoing investment in key objectives for First Nations participation in decision making.

5 **MS McLEOD SC:** Now, there is no present plan in Water is Life or anywhere else - correct me if I'm wrong - for Traditional Owners to take up water entitlements, is there?

10 **THE HON. HARRIET SHING:** Other than through a section 51 licence application under the Act, no.

MS McLEOD SC: Perhaps let's cover the key concepts. We'll take a step back.

THE HON. HARRIET SHING: Yes.

15 **MS McLEOD SC:** In terms of the way that rights are granted to or held by authorities. If we can just take that down, and I will just bring up, before I do that, the groundwater maps as well. Could we please have the groundwater entitlement volume by owner type per groundwater catchment map.

20 **THE HON. HARRIET SHING:** Oh wow, that's small.

MS McLEOD SC: So this deals with groundwater, not surface water, and you see there the breakdown for each of the areas who owns that water. The teal colour, if you can distinguish that, is "water corporations private"; does that mean private
25 individuals or organisations?

THE HON. HARRIET SHING: Yes.

30 **MS McLEOD SC:** And power generation make up the bulk - sorry, the remainder of those circles.

THE HON. HARRIET SHING: Yes.

35 **MS McLEOD SC:** Are First Nations rights captured by private or are not captured at all, do you know?

40 **THE HON. HARRIET SHING:** They would in certain circumstances be captured for example by water corporations where water is returned because it becomes available through savings or efficiency measures. There is also in power generation, as one example of what has previously happened in the Latrobe Valley, what has been known as the three-four bench and the way that water has been allocated to power stations to produce power, as they come offline, water will become available, and that is where, again, there is a decision to allocate a portion of that water, and I
45 am yet to make a final decision on that, to - to parties including First Peoples environmental water and also irrigators. So that's one such example that also includes that.

MS McLEOD SC: But talking about groundwater, we are not talking about water savings, are we?

5 **THE HON. HARRIET SHING:** No, sorry, I was going into other - other terrain.

MS McLEOD SC: And in terms of unused water for power generation, are we talking about groundwater in part?

10 **THE HON. HARRIET SHING:** Yes.

MS McLEOD SC: Okay. Could we show the next map which is surface water. Surface water entitlements we see here, the large part controlled or owned by water corporations. Again, for First Nations people, is their participation in that, these water savings or allocations from water savings or unused water from elsewhere, other processes?

15 **THE HON. HARRIET SHING:** Yes.

MS McLEOD SC: We see large dark blue slices for private ownership, what's called environment, and loss or operations; is that savings? Is that the same measure there?

20 **THE HON. HARRIET SHING:** The purple?

MS McLEOD SC: Yes.

25 **THE HON. HARRIET SHING:** The light purple, yes. In terms of private, I might just say there are - there are licence arrangements that are in place whereby Traditional Owners are part of the - the open water market. So again, that is something also to note, that is notwithstanding the exclusion and the disadvantage and the lack of economic opportunity that makes so many barriers arise around that opportunity, but that does still feature, if only in small part, in the private market as well.

30 **MS McLEOD SC:** So in the private market -

35 **THE HON. HARRIET SHING:** Yes.

MS McLEOD SC: Other competitors are irrigators.

40 **THE HON. HARRIET SHING:** There may well be water allocated for irrigation purposes, for example, on the open market, the water market, which are held by Traditional Owners.

45 **MS McLEOD SC:** Which allow them to purchase that water if they can pay for it, or allowed them to take that water?

THE HON. HARRIET SHING: For purchase. What I'm saying is the system can treat people on that market equally where there is a licence in place.

MS McLEOD SC: Assuming that they can pay?

5

THE HON. HARRIET SHING: That is what I am saying. Despite the barriers that exist and all the challenges around disadvantage and the manifold blockages to even being able to get to that space, yes.

10 **MS McLEOD SC:** Okay.

COMMISSIONER HUNTER: So hang on. You have to pay - so you are saying there are some First Peoples who have paid for licences?

15 **THE HON. HARRIET SHING:** I am saying if there is a water market and there is an equal approach to that for everybody, that might include First Peoples, but that's not actually addressing disadvantage. Because that's just saying -

20 **COMMISSIONER HUNTER:** I am just going to say we're the most disadvantaged people.

THE HON. HARRIET SHING: Absolutely.

25 **COMMISSIONER HUNTER:** So, you know, I don't understand -

THE HON. HARRIET SHING: So the point that I'm making is separate to the one around return of water to Traditional Owners.

30 **COMMISSIONER HUNTER:** Yes.

THE HON. HARRIET SHING: This is whether on the open market -

COMMISSIONER HUNTER: They will own water.

35 **THE HON. HARRIET SHING:** Yeah, yeah.

COMMISSIONER LOVETT: Can you articulate to us here what is the government doing about that, if anything.

40 **THE HON. HARRIET SHING:** About?

45 **COMMISSIONER LOVETT:** In particular about enabling Traditional Owners and working with them to be able to purchase waters equally. So what plan and program is in place right now so TOs can equally buy water to strengthen their capacity, I think, is the question that needs to be asked. Yes, if we've got money right now, we can buy it.

THE HON. HARRIET SHING: If it is available.

COMMISSIONER LOVETT: Okay. So water is available, Minister. What is the government going to do with Traditional Owners to help them through this avenue, not other avenues but this avenue, to be able to buy water equally. Does the government have any programs in place to enable that?

THE HON. HARRIET SHING: So where water is fully allocated, that's not available to anyone.

COMMISSIONER LOVETT: Yes.

THE HON. HARRIET SHING: Except for the Commonwealth that has indicated that it is entering the water market because of the legislation that passed late last year.

COMMISSIONER LOVETT: Yes.

THE HON. HARRIET SHING: Which removes a cap on the amount of water that can be bought back for economic purposes. That's then also associated with that \$100 million. That is - that is one part of it. The other, perhaps the other useful concept I am trying to get at is environmental water, and where that might sit is the overlap between environmental and cultural water, and that significant volume 667 gig, gicalitres, that's a very large amount of water, and there are a lot of overlaps between what cultural and spiritual connection to water looks like, what healthy Country and water on Country looks like from an environmental - from a European imagining of environmental water.

COMMISSIONER WALTER: With respect, Minister, I think Commissioner Lovett asked a very specific question, which was what policies and programs are in place to - because you talked about First Peoples being able to buy on the open market or on the particular market, what policies and programs are in place to support First Peoples to do that?

THE HON. HARRIET SHING: Water is Life has not actually provided for that, so that's been made very clear.

COMMISSIONER LOVETT: That was the answer I was looking for.

THE HON. HARRIET SHING: I beg your pardon, I didn't understand.

MS McLEOD SC: Can we just take a moment, Minister, just to explain the basic market concepts. Correct me if I'm wrong; I just want to set it out so there is clarity around it. The environmental water reserve is the legally recognised amount of water set aside to meet environmental needs. Correct? When we're talking about environmental water reserves, that is what we are talking about?

THE HON. HARRIET SHING: That's correct.

MS McLEOD SC: They are equivalent or identical in nature to what is known as bulk entitlements.

5

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: It's a share of the available resource.

10

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: Okay. The obligations on environmental entitlements include the passing flows that water corporations or licence diverters are obliged to make out of storage or past a particular diversion point; correct?

15

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: The proportion of passing water flows required to meet environmental needs is considered part of that environmental water reserve.

20

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: Okay. There's a notion of above-cap water. That includes water left over after limits on diversions have been reached?

25

THE HON. HARRIET SHING: Yes.

Ms McLEOD SC: And unregulated flows that cannot be kept in storage for whatever reason?

30

THE HON. HARRIET SHING: Yes.

Ms McLEOD SC: Most of the environmental water reserve is comprised of this above-cap water. And do you accept it is the portion of water that is most susceptible to things such as climate change, drought and other climate impacts?

35

THE HON. HARRIET SHING: I do. What I would also add to that, though, is population growth is another feature of the changes to the availability and the use of water, not just in our metropolitan settings and with the retailers that operate under Melbourne Water, but also around the state.

40

MS McLEOD SC: And to speak in plain terms, as populations grow, the pressure on environmental water reserves grows such that the amount allocated for those flows is likely to diminish?

45

THE HON. HARRIET SHING: As the population grows, that may diminish, but the role of manufactured and recycled water should not be underestimated in being able to address that shortfall in the demand as it relates to population growth.

5 **MS McLEOD SC:** Just in terms of recycled water, at present, Victoria does not allow for recycling of black water; correct?

THE HON. HARRIET SHING: Yes.

10 **MS McLEOD SC:** Does it allow for recycling of grey water?

THE HON. HARRIET SHING: In limited circumstances in terms of domestic use, yes.

15 **MS McLEOD SC:** Okay. Coming then to bulk entitlements held by water corporations, these secure the tenure of these corporations water rights in perpetuity. Correct?

THE HON. HARRIET SHING: Sorry, could you say that again.

20

MS McLEOD SC: They secure entitlements in water corporations in perpetuity?

THE HON. HARRIET SHING: Yes.

25 **MS McLEOD SC:** They provide the right to water for systems operations, for reasonable allocations, and other rights and obligations broadly.

THE HON. HARRIET SHING: Yes, and can I just distinguish that from the section 51 licences we were talking about earlier. They have a limited time life; they are not in perpetuity.

30

MS McLEOD SC: So section 51 licences are known as take and use licences.

THE HON. HARRIET SHING: Yes.

35

MS McLEOD SC: These allow for diversions from unregulated - and some regulated but mostly unregulated - river systems and extractions of groundwater.

THE HON. HARRIET SHING: Yes.

40

MS McLEOD SC: They are issued for a specified volume specified period of time and subject to a range of conditions.

THE HON. HARRIET SHING: Yes, that's correct.

45

MS McLEOD SC: For example, if you had a power plant that needed a particular volume of water, would you expect to see a section 51 licence, or would that be regulated in another way?

5 **THE HON. HARRIET SHING:** No, it could be for a section 51 licence. There is also a framework for the power generation we have seen in the Latrobe Valley, for example.

10 **MS McLEOD SC:** Okay. And I might just bring up sections of the Act now so that we understand it. There are section 8 and 8A rights which provide for an individual or member of a Traditional Owner group to take and use water from a waterway or bore, but only for domestic and stock or traditional purposes without a licence. Now, traditional purposes in that case does not contemplate a large volume of water, does it?

15 **THE HON. HARRIET SHING:** No, it doesn't. And that's - sorry, just to add a remark, if I may. That is another example of how the inequity is grounded in language because the presumption is that water would be not used in any volume, because of the conception of what traditional purposes looks like. And stock is, you
20 know, again, take and use, stock, I mean we are talking about very, very colonial concepts of the way in which water is - is used.

MS McLEOD SC: Okay. Can we bring up section 7 of the Water Act, please. I am
25 going to ask you when that comes up, Minister, just to explain in broad terms how the Water Act enshrines the concept that Victoria's waters are owned by the Crown. And if you look behind you, it might be easier to read. The language speaks for itself. But in broad terms, the Water Act section 7 provides for the continuation of the Crown's rights to water, in essence, and notes under subsection (2):

30 "The Crown right to use, flow and control is not diminished by various things."

THE HON. HARRIET SHING: Yes.

35 **MS McLEOD SC:** Section 8. Do we have section 8? I have 8A up there; maybe I didn't ask for section 8. But that allows for the use of private water for domestic and stock use free of charge.

THE HON. HARRIET SHING: Yes.

40 **MS McLEOD SC:** So you've got to own land and you've got to own stock to be able to access that water.

THE HON. HARRIET SHING: Again, it is that connection. You must own land, and the dispossession of land has made that impossible in so many instances.

45

MS McLEOD SC: I am glad you are ahead of me, Ms -

THE HON. HARRIET SHING: I'm sorry, I beg your pardon.

MS McLEOD SC: You've got where I was going. The Water Act 1989 introduced an entitlement framework where the Minister for Water issues entitlements, including bulk entitlements, environmental entitlements, water shares and take-and-use licences; that is the framework?

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: Okay. And those water entitlements provide an ongoing right to water in surface water or groundwater systems, but it's not always necessarily available each year.

THE HON. HARRIET SHING: No, that's correct.

MS McLEOD SC: So how do those work in practice, in terms of those seasonable allocations, if water is not available?

THE HON. HARRIET SHING: If water is not available, there may be restrictions whereby the amount available is restricted because of a projected shortfall, such that we will enter into periods of critical drought. There are instances in which - so metropolitan water corporations, for example, have secured a right to 75 gigalitres of water that can be moved and used in circumstances where water storages within our grid fall to 30 per cent, and that's where - again, when we are talking about the climate critical climate scenarios, that's - that's one of them.

MS McLEOD SC: Do you have handy, Minister, I think in our folder it is behind tab 5 of your material, the DEECA paper titled Land Waters and Resources Revenue Collected by the Victorian Government to November 2023. Tab 5 in that folder - sorry, it's behind you -

THE HON. HARRIET SHING: Yes, I do, thank you.

MS McLEOD SC: The Commissioners have that. Looking at page 3 of 11, Hypothecated Revenue.

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: Which notes:

"That the collective balance of various trust funds managed by DEECA in 2021-22 was 1.281."

And some hundreds of thousands, under the Hypothecated Revenue heading.

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: And it's section 5 of the paper.

THE HON. HARRIET SHING: Inland water-related (indistinct).

5 **MS McLEOD SC:** Yes, pages 13 and 14, there is a table of key revenue streams. Again, this is for 2021-22:

"...generated from fees and charges relating to services and uses of Victoria's inland water."

10

And the table shows, adding it all up, that from - for 2021/2022, the total revenue from inland water was approximately \$6.6 billion. Do you see that?

THE HON. HARRIET SHING: Yes.

15

MS McLEOD SC: There's a column, the final column on the right:

"Do Traditional Owners primarily benefit from revenue?"

20 And for each of the five listed revenue streams, there is a dash. We understand that dash to mean zero or no; the Traditional Owners do not benefit from that revenue. Is that how we understand that column?

THE HON. HARRIET SHING: Yes, yes.

25

MS McLEOD SC: So of the \$6.6 billion from each of those five revenue streams for water, Traditional Owners receive no primary benefit?

THE HON. HARRIET SHING: Yes.

30

MS McLEOD SC: Correct? For a single year. If we then turn to annexure C to the RFI response - I'll just find that for you.

COMMISSIONER LOVETT: Just while we're doing that, counsel, can you please read that figure out again?

35

MS McLEOD SC: Yes. \$6.6 billion for the year 2021 to 2022.

COMMISSIONER LOVETT: One financial year.

40

THE HON. HARRIET SHING: Yes.

COMMISSIONER LOVETT: I mean, how does that sit with you, Minister, hearing that?

45

THE HON. HARRIET SHING: Terribly, terribly.

COMMISSIONER LOVETT: 6.6 billion. That's not even litres of water; that's dollars. Thanks, counsel.

5 **MS McLEOD SC:** I am just trying to find that annexure C document in my folder. Pardon me for a second. I think it is 2(c).

THE HON. HARRIET SHING: 2(c).

10 **MS McLEOD SC:** 2(c) behind your statement.

COMMISSIONER LOVETT: It's shocking. Sorry, I'm still on that, 6.6 billion and we received nothing.

15 **MS McLEOD SC:** Coming to annexure C, this is the departmental RFI response in our folders at 2(c). This sets out the various water revenues the Victorian Government receives. And from this document, it appears the total revenue received by the Victorian Government from water for the 13-year period financial year 2010 to financial year 2023, if you trust my maths, is just over \$83 billion, so the sum of all the nominal sum amounts in the final column. Does that sound right to you,
20 Minister?

THE HON. HARRIET SHING: Without adding it up, I will trust your judgment on that.

25 **MS McLEOD SC:** How much of that 83 billion in revenue has been distributed to Traditional Owners?

THE HON. HARRIET SHING: Can I - can I take that one on notice and perhaps give that to you? I would -
30

COMMISSIONER WALTER: Can we get an estimate?

THE HON. HARRIET SHING: Yeah, I'd prefer to, if I can take it on notice. I'm very happy to give you that information and that detail. Again, we're looking at zero as the starting point for that. I just want to make sure that that there is not anything else in the mix that I have not captured.
35

COMMISSIONER WALTER: So it's likely to be zero.

40 **THE HON. HARRIET SHING:** Yes, yes, I just wanted to see if there is anything else I needed to put on the record, which I am happy to do if it is available.

COMMISSIONER LOVETT: Can you read that figure out again, counsel.

45 **MS McLEOD SC:** 83 billion for the financial year 2010 to end of financial year 2023, nominal sum added up is \$83 billion from water, the various water revenues.

COMMISSIONER LOVETT: 83 billion.

5 **MS McLEOD SC:** Yes. Is that an appropriate time to have a pause, because it would be good to confirm that number, and we probably just need a short break now, if that's okay.

10 **COMMISSIONER LOVETT:** And please also confirm how many Aboriginal - executives who identify as Aboriginal, not Aboriginal execs, if we be - can be clear on that.

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: If we can answer that in the time available.

15 **CHAIR:** How long counsel, 10 minutes or 15?

MS McLEOD SC: 10 minutes, thank you, Chair. I should just check, the minister is not catching a plane?

20 **THE HON. HARRIET SHING:** I'll be able to get that - we can go all night, if you'd like.

COMMISSIONER LOVETT: Don't say that.

25 **THE HON. HARRIET SHING:** I will.

COMMISSIONER LOVETT: We have to start somewhere with that 86 billion.

30 **MS McLEOD SC:** Thank you, Chair.

<THE HEARING ADJOURNED AT 3.54 PM

<THE HEARING RESUMED AT 4.15 PM

35 **CHAIR:** Thank you, counsel.

40 **MS McLEOD SC:** Thank you, Chair. Thank you, Minister. Before the break, I asked you a couple of questions, and I understand that you've had an opportunity to follow up on the answer to those questions. The first is, how much of the \$83 billion revenue has been distributed directly to First Nations, and the answer to that question?

45 **THE HON. HARRIET SHING:** The answer is zero directly. Water corporations collect revenue and they don't report against that, though, nor are they required to.

MS McLEOD SC: So the answer is zero.

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: The second question was, how many of the executive team members for the water and catchment executive are First Nations people?

5

THE HON. HARRIET SHING: Of the water and catchments executive, out of a total number of 21, zero Aboriginal - or as identified as Aboriginal. Across the water and catchments team within non-executive teams in total, out of 358, five are in that space and two within the Aboriginal water unit.

10

MS McLEOD SC: Within DEECA.

THE HON. HARRIET SHING: Yes, that's correct.

15 **MS McLEOD SC:** And are those two within the water unit at an executive level?

THE HON. HARRIET SHING: I don't believe so.

MS McLEOD SC: Just coming back to that \$83 billion -

20

THE HON. HARRIET SHING: Could I just - just to confirm, no, the answer to that one is no, I just looked that up. Yes.

25 **MS McLEOD SC:** I asked you about that \$83 billion of water revenue received by the State from - for the financial years 2010 to 2023. My rough maths suggests that's, on average, if it was averaged out, around \$6.3 billion per annum. Could I just ask you to accept my maths for the moment. Can you turn, please, to the DEECA response, RFI response behind tab 2. Could you turn to page 2 of that document, please. At the foot of the page, paragraph 5, there's a table which sets out the total
30 expenditure across all water portfolio programs, and this is a different period of time, of course. It's from 2019 to 2024, provided in the table set out below, and do you accept that information suggests DEECA's expenditure on First Peoples or Traditional Owner water portfolio programs over that period of time is around \$39.2
35 million?

35

THE HON. HARRIET SHING: Yes.

40 **MS McLEOD SC:** And that seems to be increase - an increasing number from previous years which would correlate with the introduction of the Water is Life policy?

THE HON. HARRIET SHING: Yes, that's correct.

45 **MS McLEOD SC:** I take it from the information in the DEECA response that there are 16 Traditional Owner water portfolio programs. Do you need to go to Annexure A to consider those?

THE HON. HARRIET SHING: Yes, I can, if you would like, counsel. Sorry.

MS McLEOD SC: It's very, very small writing.

5 **THE HON. HARRIET SHING:** Oh my gosh. Sorry, it's late in the day and there's no way I cannot read what appears to be point 1 font.

MS McLEOD SC: Take it from me that there are 16 Traditional Owner water portfolio programs, 16 that - that line sheet that has been provided.

10

THE HON. HARRIET SHING: Yes. Yes.

MS McLEOD SC: Do you know how many of those 16 programs are provided by either a First Nations or First People's business, Traditional Owner organisation or recognised Aboriginal party under the Aboriginal Heritage Act?

15

THE HON. HARRIET SHING: I know that at least \$23 million of that \$39.2 million is being delivered to Traditional Owner corporations. I don't know how many, though - again, I don't want to - I don't want to frustrate your work, but I don't have that information to hand. Again, I'm very happy to provide it but it is at least \$23 million out of the 39.

20

MS McLEOD SC: From this table that's been provided - that's very difficult for you to read, I appreciate - we have calculated or added up that there are 10 of those programs provided by First People's business, TO organisation or a RAP.

25

COMMISSIONER WALTER: Sorry, counsel, 10 of how many?

MS McLEOD SC: 10 of the 16.

30

COMMISSIONER WALTER: Of the 16. Yes.

MS McLEOD SC: So, Minister, when you consider the \$83 billion revenue received by the Victorian Government from water revenues and the amount spent on Traditional Owner First Peoples' water programs, that's a relatively very small amount. Would you agree with that?

35

THE HON. HARRIET SHING: Yes.

40 **CHAIR:** Sorry, I've lost my place. Sorry, counsel.

MS McLEOD SC: Not at all. I will wait for the Chair to catch up. So a very small amount. And the Victorian Government - the current government under various, or two different premiers at least, has been in power for most of the period of time we are talking about; correct?

45

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: So given your commitment stated in opening that enduring water and water rights, compared to the small - relatively small allocation of revenue to First Nations programs, can I ask you to reflect on that and the adequacy of that funding for First Nations programs water rights and water itself.

THE HON. HARRIET SHING: The allocation of funding has been, without a doubt, undeniably inadequate over a very long period of time. The other part of this is the volume of water that's been made available and the discussions on that, I think, will go to where and how and what and when has been delivered. I would like to see - again, to what I said earlier about reform - a process of increased urgency and haste, but also not to cut corners around engagement. What is it that First Peoples want and need to enable that to happen in program and in service delivery, in procurement in the way that contracts operate, in the way that people are able to gain and secure employment and employment pathways to whether its working on Country or sitting around a boardroom table? What does that look like for government around funding, and again to look at the scaling up of what's being delivered, to move from 3.4 million up to nine point - just under 9.1 million over a period of four years. It's incredibly inaccurate - inadequate, but it does show an increase. The challenge -

COMMISSIONER WALTER: It's still less than half of one per cent.

THE HON. HARRIET SHING: Absolutely. Again, in terms of the water, to talk about the water, we are talking about 0.2 per cent, so again I would like to see reform.

COMMISSIONER LOVETT: 0.02?

THE HON. HARRIET SHING: 0.2 of one per cent.

MS McLEOD SC: Just looking at that 39 million over that period of time has been spent on, so this is 39 million over the period 2019 through to what is been budgeted for 2024, so not necessarily spent but certainly allocated, this includes the sum of around \$5 million on water and catchments group internal staff expenditure, so that's \$5 million of the 39 million allocated to Traditional Owner First Peoples' water programs spent on staff costs for the Aboriginal Water Unit within the department. Correct?

THE HON. HARRIET SHING: Yes.

COMMISSIONER HUNTER: Sorry, even though that's department staff?

COMMISSIONER LOVETT: Can we just confirm, sorry, how many of those staff again were Aboriginal that you articulated a minute ago?

THE HON. HARRIET SHING: Five across water and catchments and two across the Aboriginal Water Unit.

5 **COMMISSIONER LOVETT:** Two in the context of that funding we just talked about.

COMMISSIONER HUNTER: 5 million.

10 **COMMISSIONER LOVETT:** Thanks, Minister. Sorry counsel.

MS McLEOD SC: I might have the wrong number. It is probably my fault reading (indistinct). Sorry, the water program is 22, that is the DEECA staff, excluding DEECA staff's salaries. The water and catchments group internal staff expenditure is \$5 million. Yes.

15 **THE HON. HARRIET SHING:** Yes.

COMMISSIONER LOVETT: To reiterate the point, I was making it is two staff for the \$5 million.

20 **MS McLEOD SC:** Well, the \$5 million is spent on other DEECA staff who administer those programs, only two of whom -

COMMISSIONER LOVETT: Identify as -

25 **MS McLEOD SC:** Yes. Another item of expenditure is the Aboriginal water program - this is the second line - excluding DEECA staff, this is to better design for Aboriginal and water management and reconnect industries with economic and cultural and spiritual purposes. So that's a grants program for self-determined
30 projects and Aboriginal water officers. That is the single largest expenditure on the second line, 22.7 million. You might not be able to read that in your small font version there, Minister, but that is to your knowledge the largest single expenditure?

35 **THE HON. HARRIET SHING:** Yes.

MS McLEOD SC: And that program pays for Aboriginal water officers and coordinates the implementation of Water is Life?

40 **THE HON. HARRIET SHING:** Yes, amongst other things, yes.

MS McLEOD SC: Neither of those expenditure is controlled by Traditional Owners, are they? The 5 million and the 22 million?

45 **THE HON. HARRIET SHING:** Water is Life in relation to the development and delivery of planning and of progress does have a significant process involving Traditional Owners.

COMMISSIONER HUNTER: Is that - that's obviously engagement, so you pay them to engage, but it's not the whole amount.

THE HON. HARRIET SHING: No, no -

5

COMMISSIONER HUNTER: The government controls the money basically is the question; is that correct?

THE HON. HARRIET SHING: For the purpose of that framework.

10

MS McLEOD SC: Just to be clear, Water is Life is a government program; correct?

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: And Traditional Owners participate in that program?

THE HON. HARRIET SHING: Participate, yes, participate, but also guide that program. That's been one of the -

COMMISSIONER HUNTER: They're not a partner. They're not a partner. Government holds the money, and it's a government document; am I correct?

20

THE HON. HARRIET SHING: Yes.

COMMISSIONER HUNTER: So they're paid to participate in it, but government controls the funds to that.

25

THE HON. HARRIET SHING: Yes, sorry, I was going back to how it was developed and what led to it coming into being which was for the purpose of returning waters to Traditional Owners.

30

COMMISSIONER HUNTER: We're not even that far, as stated, returning water, we are talking about the Water is Life strategy created by government for First Peoples and you control the money; is that correct?

35

THE HON. HARRIET SHING: It was created by government. Yes, that's correct.

COMMISSIONER HUNTER: Thank you.

MS McLEOD SC: So just to be absolutely clear, of the \$83 billion we're talking about, the small amount, as you acknowledged, of 39 million allocated -

40

THE HON. HARRIET SHING: Over that four year period rather than 10.

MS McLEOD SC: Including this year, for Traditional Owner First Nations programs, the largest amount of that is going for administration of those programs. Correct?

45

THE HON. HARRIET SHING: Yes, and that includes the capacity building as well, so that's -

5 **COMMISSIONER HUNTER:** But the government still holds that money; am I correct?

THE HON. HARRIET SHING: Yes, yes.

10 **COMMISSIONER HUNTER:** Thank you.

MS McLEOD SC: While some of the work is being done by Traditional Owners, a lot of the work is still being done by public servants.

15 **THE HON. HARRIET SHING:** Yes.

COMMISSIONER WALTER: Just to clarify, that is 27 million. That's the 5 million plus the 22, we are talking about, 5 million for staff and 22 for the water officers?

20

THE HON. HARRIET SHING: Yes.

COMMISSIONER WALTER: Out of 39.

25 **MS McLEOD SC:** Now, coming to the implementation of Water is Life, this is DEECA's overarching framework for increasing Traditional Owners' access to land and management of water and waterscapes. Correct?

30 **THE HON. HARRIET SHING:** It's government, so it does go beyond DEECA. There is a couple of policy overlaps there with other portfolios.

MS McLEOD SC: Thank you for that correction. So government's overarching framework. And the primary responsibility of that rests with DEECA and your oversight?

35

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: The policy commitments in Water is Life cover three main areas broadly. This is page 18 of Water is Life; do you have that document handy?

40

THE HON. HARRIET SHING: Yes, I do.

MS McLEOD SC: I'll just turn it up. That is tab 6 in the folder. You oversaw this project, and in fact you have concluded your foreword - your statement in the foreword.

45

THE HON. HARRIET SHING: I actually began in the portfolio after almost all of this work had been undertaken, so -

MS McLEOD SC: Something you inherited?

5

THE HON. HARRIET SHING: Well, yes, I did, and again I don't want to say that this was something I was involved in from the get-go. I would have liked to have said that, but in - I am going to be frank about the fact that I wasn't. But yes it now sits under me in that water portfolio.

10

MS McLEOD SC: Just before I come back to your foreword, can I come back to page 18 of the document which describes how Water is Life works. In the right-hand column, there's a description of the section having three main parts or areas. They are increasing Traditional Owners' decision making in caring for water landscapes, returning water for healthy Country, healthy mob and cultural economies, and implementation and accountability. So this document is intended to be a roadmap, if you like, to Traditional Owner access to waters, with those three parts, and what is described as 12 targeted outcomes and time frames for each.

15

20 **THE HON. HARRIET SHING:** Yes.

MS McLEOD SC: Okay. Now, can I turn back to your foreword at page 8, just to touch on the volumes of water that are mentioned at the time this document was delivered. You note in your foreword:

25

"We've already begun delivering on Traditional Owners' aspirations to own and manage water."

Including - just for the operator, it's DEC.9000.0001.4565 at page 9.

30

COMMISSIONER HUNTER: Sorry, Minister, is this 2021 or 2022, this document?

THE HON. HARRIET SHING: Water is Life, that date was 2022. I don't have the - I don't have the exact day -

35

COMMISSIONER HUNTER: It was 2022, thank you.

MS McLEOD SC: It doesn't look like we've got the text on the screen; we've just got the beautiful picture.

40

COMMISSIONER WALTER: Ms McLeod, you did give them a slightly wrong number. It's 5465.

MS McLEOD SC: 5465 at page 9. They've got the right page, but we don't have the text.

45

COMMISSIONER WALTER: Right.

MS McLEOD SC: They usually help me out when I get the wrong number. But just looking at the text, it says:

5

"We've already begun delivering on Traditional Owners aspirations to own and manage water, including two gigalitres from unallocated water in Gippsland returned to Gunaikurnai, returned in early 2021 for what's described as cultural and economic development purposes, 2.5 gigalitres of unallocated water in the Palawarra (Fitzroy River) system in south-west Victoria to Gunditjmara - "

10

Related to Budj Bim, and we have heard evidence about the return of that water:

"And 1.36 gigalitres of additional water savings in the Goulburn Valley Connections project set aside for Traditional Owners in northern Victoria.

15

So just pausing there, has that water tally been delivered or set aside?

THE HON. HARRIET SHING: It's set aside. Work is ongoing with the department and with Traditional Owner groups.

20

COMMISSIONER LOVETT: So this document again was signed in -

THE HON. HARRIET SHING: 2021, 2022.

25

COMMISSIONER LOVETT: 2022, which is still three years ago. And that water is still - where is that water sitting? Not with the TOs?

THE HON. HARRIET SHING: No, not with the TOs.

30

COMMISSIONER LOVETT: Three years and still not sitting with Traditional Owners. Sorry, counsel.

MS McLEOD SC: And of that water that's identified there, two gigalitres of unallocated water from the Mitchell River and 2.5 gigalitres of unallocated water from the Palawarra Fitzroy River systems, a total of 4.5 gigalitres have been delivered for Traditional Owner ownership and management. Correct?

35

THE HON. HARRIET SHING: Yes.

40

MS McLEOD SC: Now, compared to the volume of water from which the State of Victoria receives revenue, what sort of scale are we talking about? What's the magnitude of that return of water?

THE HON. HARRIET SHING: I can't think of a word that is smaller than "tiny".

45

MS McLEOD SC: Miniscule.

THE HON. HARRIET SHING: Miniscule.

MS McLEOD SC: Minute. I can think of a number.

5

COMMISSIONER HUNTER: It means the 1.36 gigalitres that you're still holding is minute, it's been since 2022 and it still hasn't been allocated. And I'm just going to point out in every hearing we have, we constantly see things that are promised, they are in writing, yet are never handed over and they just stay there. And this is another example of this, this one is in writing, and in your foreword. So when's an estimate of when that will be handed over?

10

THE HON. HARRIET SHING: There are multiple groups involved in that work, and because it is a process that involved multiple groups, we've had to learn by doing in terms of the entitlement framework just not being geared towards assisting this sort of return.

15

COMMISSIONER HUNTER: Which framework is that?

THE HON. HARRIET SHING: The framework of the way in which the licensed applications are processed, and it's - licence applications are hard at the best of times, and we're trying to make things easier and faster for Traditional Owners. We've also got to continue those conversations to make sure that we have a good measure of support for Traditional Owners from water corporations.

20

COMMISSIONER HUNTER: Can I just say that I understand all that completely, but you were out there this morning and you heard Brendan speak and you heard him talk about the next generation. You have mentioned the next generation. The next generation is not going to have water on our Country for dancing or practice culture on it, because we don't even have any. You were there, you have felt it, and you have seen it then we come up again with things of, "oh, time". As Commissioner North pointed out the hurt, the suffering and the pain within those times, you don't get to see it every day because you are not in community every day. And we are losing - we are losing our totems, we are losing food, we are losing our language, we are losing who we are - our connection to water. And if that was not clear this morning that we need - this is urgent and particularly down there where you can see - you said yourself these water lines, there were water lines where there used to be water. It is not there. That is heartbreaking as an Aboriginal woman to be down there, and Uncle Brendan and all some of my cousins down there giving their time and energy, and all we get are promises of things and it has to take time, and frameworks and you know, policies and all of that, that just never are fulfilled, and I just had to say it, because I am really frustrated because I feel there is a lot of politician talk around the table here at the moment. And I am just getting really frustrated that we are not - we are not going to get this water.

25

30

35

40

45

THE HON. HARRIET SHING: So I will respond to that if I can. It's certainly not my intention. It is not my intention to engage in politician talk. It's why I talk to reform earlier.

5 **COMMISSIONER HUNTER:** But you keep saying it is going to take more and more consultation. To be honest, we are really sick of consultation. You were here, Brendan here this morning, the work he had done around water to enable him to talk to other mob to get them to where he is at. Things need to be done differently.

10 **THE HON. HARRIET SHING:** But if that means legislative change to enable reform, then I want to see how we can do that, because that is another way of approaching this.

15 **COMMISSIONER HUNTER:** Legislative reform takes, like, a long time. Let's look at what we can do now and work with people like Brendan and people that do of what we can do now.

20 **COMMISSIONER LOVETT:** Minister, out of the 1.36 gigs, what governance is in place - it says in here we are working with Traditional Owners and there are some complexities associated, I am assuming this is non-RAP groups, non-RAP groups, what government arrangements are in place where you're working with those groups, multiple groups, and bringing them together?

25 **THE HON. HARRIET SHING:** Governance arrangements that are determined by groups and with groups.

30 **COMMISSIONER LOVETT:** So is it someone senior in the department and the executive who are bringing them together, or what does the governance look like, just so that we can understand.

THE HON. HARRIET SHING: So the water and catchments group is at the centre of the process of support for those discussions to happen with those groups and between those groups around what the 1.36 looks like as it is delivered.

35 **COMMISSIONER LOVETT:** Yes. And out of those Traditional Owner groups, Minister, have had you an opportunity to meet direct with them without them - so you get advice from the government or from the bureaucrats, water and catchments group. Have you met directly with the Traditional Owners away from the bureaucratic process?

40 **THE HON. HARRIET SHING:** Yes, and I will give you not all together in one collective.

45 **COMMISSIONER LOVETT:** Yes, that is fine.

THE HON. HARRIET SHING: But with a range of Traditional Owner groups, that's part of the work that I have been doing to hear directly from people, and I'm - yeah, I'm happy to provide you with detail about when where and how.

5 **COMMISSIONER LOVETT:** No, that is fine. I just want to be clear that is happening and they have direct engagement with yourself, because I think that is important.

THE HON. HARRIET SHING: Not all of them, I'm going to say.

10

COMMISSIONER LOVETT: There is an opportunity for the ones you haven't met with to meet with you.

THE HON. HARRIET SHING: Absolutely.

15

COMMISSIONER LOVETT: To talk about this. Currently, what is one gigalitre worth in the current market today in a monetary sense, okay. Thanks.

20 **THE HON. HARRIET SHING:** So in the northern part of Victoria, it's about - it's between four and five thousand dollars.

COMMISSIONER LOVETT: Okay.

25 **THE HON. HARRIET SHING:** It changes a lot though, depending on conditions.

COMMISSIONER LOVETT: And so what would one gigalitre worth be in another part of the state to give us a comparison, because you just said it is different up here.

30 **THE HON. HARRIET SHING:** Oh no, in terms of the market we have got, so with the available -

COMMISSIONER LOVETT: All right that is a statewide figure right now. Yes.

35 **COMMISSIONER WALTER:** Just for the record, could we have - I know it's 4.5 gig actually delivered, 1.36 gig promised, can we actually get a percentage of how much that is of the allocated gigalitres?

40 **MS McLEOD SC:** So, Minister, can I help here, the water entitlements by volume used, according to information provided by the department, in a document headed Legal and Policy Frameworks, from 2020 to 2021, that financial year, surface water bulk entitlements are - take three zeros off for gigalitres, 4,577 gigalitres, surface water licences 22 gigalitres, and groundwater licensed entitlements 94 gigalitres. So I will just make sure I have got my decimal places in the right place, but a substantial volume - so, sorry, 4,577 gigalitres surface water bulk entitlements, 225 gigalitres surface water licences, groundwater licence entitlements 948 gigalitres. I haven't added that up, Commissioners. And we are talking about here two gigalitres

45

unallocated, 2.5 gigalitres unallocated and 1.36 gigalitres water savings. Correct? So they would fall outside those numbers, I assume.

THE HON. HARRIET SHING: Yes.

5

MS McLEOD SC: Just to close this issue off, in terms of allocations, if you turn to the summary of the action items outcomes and items on page 10 and 11 of this document, do you have that summary table of the action items?

10 **THE HON. HARRIET SHING:** Yes.

MS McLEOD SC: Each of these items, recognition and so on, has a time period for the achievement of these steps, short, medium or long term. This document was entered in 2022, so we are coming up to the end of the short-term items; correct?

15

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: And we look over at item 7:

20 "Water is returned to Traditional Owner groups across Victoria through the issue of water entitlements for their self-determined use."

The action summary is to:

25 "Enable water returned to TOs across the state by acting quickly and so on."

That is a short-term goal; correct?

THE HON. HARRIET SHING: Yes.

30

MS McLEOD SC: And what has been achieved so far is 4.5 gigalitres?

THE HON. HARRIET SHING: Yes.

35 **MS McLEOD SC:** At the end of that box, if we could zoom in on that item 7, please. Thank you. The items are:

"Act quickly on existing opportunities, opportunities include savings and unallocated water."

40

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: They are the easy picks:

45 "Develop guidelines, develop future opportunities, develop a framework."

And then the notation:

"The Victorian Government is not proposing to establish a direct water entitlement purchase program."

5 Can I ask you why not?

THE HON. HARRIET SHING: It is my advice that in the process of discussing Water is Life, the objectives around return of water to Traditional Owners was guided by what was available through unallocated water, and that as a result of that
10 and the importance of getting Water is Life done and continuing the work in other spaces that was on foot, a decision was made not to establish direct water entitlement purchase frameworks.

MS McLEOD SC: When you say "was guided by", you mean by government
15 policy?

THE HON. HARRIET SHING: Was guide - yes, yes.

MS McLEOD SC: TOs would have asked for water entitlement if they were sitting
20 around the table; you acknowledge that?

THE HON. HARRIET SHING: Absolutely. And I hear that frequently.

MS McLEOD SC: This document was developed with that caveat. There are no
25 water entitlements on the table; agree?

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: So TOs were asked to come to this negotiation and contribute to
30 this document having been told, "You will not be able to achieve water entitlements out of this process." Is that correct?

THE HON. HARRIET SHING: Save for the licence applications, and there are
35 about 10 section 51 applications on foot at the moment.

MS McLEOD SC: Take-and-use licences.

THE HON. HARRIET SHING: Yes.

40 **MS McLEOD SC:** But no ability for direct water entitlements purchase programs?

THE HON. HARRIET SHING: No.

MS McLEOD SC: So as a result, we see the contributions of the TOs who
45 participated in this document asking for things such as participation, consultation, management, use, rights and so on. They don't ask for entitlements - direct water entitlements, because they were not on the table. Is that fair?

THE HON. HARRIET SHING: Yes.

5 **MS McLEOD SC:** Is there anything to stop the government as an interim measure now moving to allow for funded buy-back schemes as an interim measure?

10 **THE HON. HARRIET SHING:** Again just to come back to the Commonwealth, they have entered the water market so there is capacity for buy backs to occur, but again that is environmental water frameworks, so environmental water rather than cultural water.

15 **MS McLEOD SC:** So is there anything to stop the State of Victoria, responsible as you have acknowledged for the dispossession of First Nations peoples from their lands and waters, is there anything to stop the State funding a buy-back scheme to enable Traditional Owners to purchase direct water entitlements, beyond political will?

20 **THE HON. HARRIET SHING:** Beyond political will, no. But I would also - again, the 667 gig that we have in environmental water, I think is an important part of this conversation.

MS McLEOD SC: Let us just distinguish environmental water and cultural flows. What is your understanding about the difference?

25 **THE HON. HARRIET SHING:** Well, cultural flows are - can be and can involve the environmental component of caring for Country in a range of ways, but that does not include, for example, the opportunities around a self-determined process that might include economic opportunity for Traditional Owners. That's sort of one component of it.

30 **MS McLEOD SC:** So cultural flows benefit the environment obviously; you agree with that?

35 **THE HON. HARRIET SHING:** Yes. Well, they benefit Country which, from another conception, is the environment for the purposes of the environmental contribution, for example.

40 **MS McLEOD SC:** Cultural flows are a lower order priority in terms of flows. Is that how I understand it? There are irrigators flows - environmental flows is a subset of environmental or lower down?

THE HON. HARRIET SHING: Environmental flows aren't lower down than irrigator flows.

45 **COMMISSIONER LOVETT:** I think what we are trying to articulate, trying to understand here - sorry, not to talk over counsel - how does the decision making,

what are the key factors in decision making? Is it environmental, cultural, what other key factors? I may have missed the beginning of that question.

5 **THE HON. HARRIET SHING:** So there is water for irrigators, for example, there is water for the environment. That is about 667 gigalitres. And there is water for cultural use, for want of a better term, which is not at present part of the complete kind of fitting in with environmental water and environmental flows.

10 **COMMISSIONER LOVETT:** How many gigalitres again for environmental flows.

THE HON. HARRIET SHING: 667.

15 **COMMISSIONER LOVETT:** How many gigalitres have been given for cultural flows, that also has environmental impacts in a positive way?

THE HON. HARRIET SHING: So that was that total figure that we went to before in terms of what has been delivered.

20 **COMMISSIONER LOVETT:** Pretty miniscule.

THE HON. HARRIET SHING: 4.5. Yeah.

COMMISSIONER LOVETT: What was that?

25 **THE HON. HARRIET SHING:** 4.5.

MS McLEOD SC: Either by volume of gigalitres or by rough percentage, what is the volume going to irrigation?

30 **THE HON. HARRIET SHING:** I've got the total. It's about \$14 billion in Victoria out of a total of about \$32 billion overall. I don't have the gigalitres, but that is the value of it.

35 **MS McLEOD SC:** So roughly half.

THE HON. HARRIET SHING: 14, yes, give - yes.

MS McLEOD SC: Roughly. No, 28. That is less than half.

40 **THE HON. HARRIET SHING:** 14 out of 32. That's right; it is less than half.

MS McLEOD SC: Okay.

45 **COMMISSIONER NORTH:** Ms McLeod, I am just puzzled. You said a moment ago that the TOs didn't ask for water entitlement purchases because they were not on the table. Is that -

MS McLEOD SC: In this submission, in the submission to Water is Life.

COMMISSIONER NORTH: But it appears in the engagement statements right through.

5

MS McLEOD SC: Yes, it does. So to be - thank you for the correction, Commissioner North. In the submissions about the targeted outcomes, they understood that water - direct water entitlements were not on the table.

10 **COMMISSIONER NORTH:** That's a government production. That is -

MS McLEOD SC: Correct, correct.

COMMISSIONER NORTH: Yes, thank you.

15

COMMISSIONER LOVETT: Can I just come back. I asked about the figures before - sorry, counsel, I just need to clarify this. The figures before for a gigalitre. Can we just give another opportunity to articulate what the figure is, because I think you quoted, Minister, was a megalitre rather than a gigalitre.

20

THE HON. HARRIET SHING: Sorry, yes.

COMMISSIONER LOVETT: I just want to be clear that we don't lose because of the big difference between those two figures and we are talking millions of difference. I want to give you the opportunity here to articulate here what is a gigalitre worth rather than a megalitre?

25

THE HON. HARRIET SHING: So again if we say that - so a gigalitre is 1 million megalitres.

30

COMMISSIONER LOVETT: Yes. But in a monetary term that is a massive difference between, you know, I think it's somewhere between 7,300 to 7,500 per megalitre, but my question was how much is a gigalitre, and I understand that there would be \$7 million. So I am just trying to articulate here the discrepancy between the megalitre and the gigalitre. And I think in the foreword, that's currently sitting in a myriad of complexities associated with colonisation in particular about right people for Country and so forth from a colonial context. 1.3 gigalitres is sitting there from 2021, maybe 2022. I just wanted to come back to that because that's an important - we are clarifying the figures. Am I right or wrong?

35

40

MS McLEOD SC: So - close. The information we have, Minister, is 1.36 gigalitres is worth approximately 5 million. I'll take six, I'll take seven. We'll get the right number for you, but in that order of magnitude.

45 **COMMISSIONER WALTER:** If I can just clarify, if my trusty phone calculator is correct, what is currently advocated, including the 1.36 promised but not yet delivered, one tenth of one per cent of the total.

COMMISSIONER LOVETT: A big difference, I want to make that clear. That's a very big difference. I also want to come back to - but not right now. I want to come back on the caveats of those three transfers, what are the caveats are what the relationship is between the State and the Commonwealth and how much involvement did the Commonwealth have in working with the State to produce those transfers. I think it's really important that we articulate the differences there as well so we get an understanding. It is a very complex process, this water process. We are flirting very strongly between what's the role of the Commonwealth and what is the role of the State, and it's not really clear at the moment. We'll come back to that.

THE HON. HARRIET SHING: Yeah.

MS McLEOD SC: I just want to stay with the status of the action plan from Water is Life at the moment. Behind tab 8 is the Water is Life implementation update September '23. We turn to the implementation progress snapshot on about the eighth page of the document. The pinpoint reference is point 7241. It's tab 8 in the folder.

THE HON. HARRIET SHING: Did you say the implementation progress snapshot.

MS McLEOD SC: Water is Life Implementation Updates September 2023. And then about - I think it is about page 8, it is headed Implementation Progress Snapshot, a table with some coloured boxes on the right-hand side. Do Commissioners have that document?

COMMISSIONER LOVETT: Yes.

COMMISSIONER HUNTER: Yes.

MS McLEOD SC: So -

THE HON. HARRIET SHING: Yeah, yeah.

MS McLEOD SC: A time frame is given for each of the outcomes provided for water for life, the action item is set out, and the time frame, short, medium or long, as we have discussed. Green is the box noted for in progress, and we note that four of those items are not yet in progress; they are merely planned. So those are medium and long-term items, medium being three to five years and long being five-plus years. So what does "planned" mean if we are getting close to that three-year period already?

THE HON. HARRIET SHING: The three-year period for the 25-year target?

MS McLEOD SC: Yes, take item 2 for example, partnerships.

"2.2: Develop new provision and ministerial rules that the VEWH requiring formal partnerships with Traditional Owners for ministerial consideration," the time frame for that under Water is Life is medium, three to five years.

5 That was in 2022. And we have the entry under implementation as "planned". In other words, not in progress; I assume that is to distinguish that from in progress. And the short point I wanted to ask you, Minister, is whether that means work has not yet started?

10 **THE HON. HARRIET SHING:** No, work has started. "In progress" means that works under way -

MS McLEOD SC: And "planned"?

15 **THE HON. HARRIET SHING:** "Planned" means that the work is again taking place to start that work. Again, I don't want to - I am sounding like a bureaucrat, but it's about setting up the systems to actually get that work underway.

20 **MS McLEOD SC:** I don't understand - sorry, the difference between "in progress" and "planned". "Planned" means you are planning to start progress.

COMMISSIONER NORTH: So "in progress" is further along?

25 **THE HON. HARRIET SHING:** Yes, that's correct.

COMMISSIONER WALTER: From what to what?

30 **THE HON. HARRIET SHING:** So when we are looking at for example for example implementation status for 2.1:

"Develop new provision and statements of obligation for ministerial consideration requiring formal partnerships between Traditional Owners and CMAs and Water Corporations."

35 That will be done by next year by the middle of next year, for example.

40 **COMMISSIONER LOVETT:** Minister, can you articulate what that means? Is that you writing to the catchment management authorities, the CMAs - the water authorities and telling them what to do? What does that look like?

45 **THE HON. HARRIET SHING:** It does take the form of those corporations having the capacity to do that work around partnerships, the framework under the Act and what they can be required to do, and around the way we are developing and delivering on engagement with the water sector to talk about those obligations, and the Victorian waterway management strategy renewal as well.

MS McLEOD SC: So for the short-term goals, Minister, those are due to be delivered by now or by 2025?

THE HON. HARRIET SHING: 2025, yes.

5

MS McLEOD SC: Which means one of those goals is still in the planning process.

THE HON. HARRIET SHING: Yes.

10 **MS McLEOD SC:** So by end of next year, the goal is it will be delivered.

THE HON. HARRIET SHING: Yes.

15 **MS McLEOD SC:** Okay. Implementation of outcome 12, 12.1 is another short-term goal:

"Traditional Owners have oversight of the implementation of Water is Life".

Another short-term goal. That has been delayed, has it not?

20

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: The departmental response states, and I'll just read it to you:

25 "The following feedback from Traditional Owners implementation of this outcome is now proposed to be delivered in a different way, namely instead of a dedicated oversight committee, DEECA will use existing forums and other meetings with TO groups to discuss progress either individually or collectively where requested. However, DEECA acknowledges the very perspectives including some strong support for an oversight committee."

30

So my question is this: Where there is disagreement between TOs about the implementation of Water is Life, how will DEECA decide what to do and how to do it within the time allocated for that?

35

THE HON. HARRIET SHING: DEECA is working alongside the catchment management authorities and the corporations with Traditional Owner groups and engaging with all groups as they want to engage and on the terms upon which they want to engage. So that varies, depending on which group and which issue and at what time - what period, because again, perspectives have changed over the course of the implementation of Water is Life. This is - it is a moving situation that requires a moving response.

40

MS McLEOD SC: Okay. Some of the challenges have been set out in the DEECA response as well, and I just invite your comment on these broadly.

45

COMMISSIONER WALTER: Ms McLeod, can I just ask before we go to that.

MS McLEOD SC: Yes.

5 **COMMISSIONER WALTER:** Given that we are well past halfway through the one to three, short, are these any of these outcomes that have actually been delivered as yet? It says they are going delivered in one to three years, and we're two point something years in.

10 **THE HON. HARRIET SHING:** So when, for example, we talk about seven and partial achievement, enabling water to be returned to Traditional Owners across the state, again to come back to what counsel has taken us through earlier, that's been partially achieved, and the work to deliver will be ongoing, and developing the guidelines for water that's been unallocated and water infrastructure projects will be completed by June next year.

15 **COMMISSIONER WALTER:** Okay. So just in short, actually none of them have been achieved as yet, today.

20 **THE HON. HARRIET SHING:** Save for the statement of obligations for water corporations which will be able to be complete next month. 2.1.

COMMISSIONER HUNTER: Is that the statement (indistinct).

25 **COMMISSIONER LOVETT:** Minister, you said a bit earlier around the governance oversight and the TOs needing to work with catchment management authorities and water authorities. You were on Country this morning, and a letter was raised by Uncle Brendan about a catchment and management authority and their relationship. And Uncle Brendan talked about the relationship or the non-relationship that Tati Tati people have, for instance, which is the catchment management
30 authority, which I think it might be Mallee CMA.

THE HON. HARRIET SHING: Yes, it is.

35 **COMMISSIONER LOVETT:** How do Traditional Owners - how do we have confidence that the catchment management authorities, using Uncle Brendan's example this morning, we have the confidence that they are working with our people, when we heard that this morning. There was evidence of a letter. And it's pretty opportunistic that we come and hold a hearing on Country, and ultimately Brendan gets a response three days before we come that they are going to finally respond to
40 his original request for engagement - not consultation; engagement. So deeper form of an expectation that our people should have, engagement. That's - how do they have confidence that the CMAs and the water corporations who are asking government for a lot of money to be able to - they see this as an extra responsibility rather than core business. And I am sure you have heard that before where they are
45 the first one to jump up and down to ask for resource, and generally they get them before our people do. I am really kind of, you know, lost for words about the trust

that our people have, when we've just heard a live example this morning of that. Like, what is your response to that, Minister?

THE HON. HARRIET SHING: Yeah, that chronology was pretty extraordinary, that Brendan took us through today. It's my expectation that CMAs will engage with and provide meaningful opportunities for discussion with First Peoples. As I understand it, there was a letter sent around the time of an intention to change the operating rules or change the operation of the regulator. I also understand that's something which has happened at roughly the same time. It is a - roughly an annual occurrence.

What I have an expectation of, though, is that where there is not a relationship of ongoing engagement, where there is not that measure of trust, firstly, all steps be taken to establish it and to nurture it, but secondly that if, for example, people aren't talking directly so that someone can say, "Look, it looks like the projections are that we are going to be able to do this and turn this off in the next couple of weeks", that they be given a heads up earlier and advised that "this is where the projections are looking like taking us", because we are around the same time every year for the last lot of three years. And closer to that time period, there can be another notification or an advice or information provided with when that is going to happen.

I understand and I don't want to speak for Brendan or, indeed, for Mallee CMA because they are not here, but in relation to Mallee CMA as I understand it, there has been notification provided to Brendan around that change on previous occasions as well. But the relationships are absolutely essential to this. We need to be able to have people engaged and talking, because that's where, again, you can get ahead of - of misinformation or of gaps in it, because people have that opportunity to talk about what is coming up, or where the problems are.

COMMISSIONER LOVETT: Well, I mean, from the Commission's point of view I would like to see evidence of that engagement back with Mr Kennedy.

THE HON. HARRIET SHING: Yes.

COMMISSIONER LOVETT: Given that the CMA have clearly articulated they have written to him multiple times, engagement has happened. I would want clarity on that so we are not going tit-for-tat on who's saying what. I think that's really important.

THE HON. HARRIET SHING: And that's my advice. I can't say conclusively but that is what I was advised, we can get that information.

COMMISSIONER LOVETT: That would be great. How often are these letters of expectations and statements of obligations issued to CMAs and water corporations, Minister?

THE HON. HARRIET SHING: So we have - it is every - so every year we have a reiteration of that letter of expectation, and every year, a corporation or an authority has to report back against it.

5 **COMMISSIONER LOVETT:** So in updating the legislation in 2019, that bill passed successfully, around recognising and managing for Aboriginal values. I understand you were not the minister at the time, but I would be confident that in updating any legislation, you would write - or a minister would write to Traditional Owners, but also to one - to articulate to them they are now being incorporated, the values and usages, but just as important you would have written to a catchment
10 management authority and a water corporation to articulate that there's new expectations or obligations that they will need to meet in that - in the legislative framework, so, you know, the point I am making sure is, this is - this is - there's been multiple letters and directions given to catchment management authorities and CMAs
15 and still our people are having to continually, you know, fight the system to get recognition.

What I'm trying to say here is that would you agree that a letter from a previous minister - or have you written previously in your tenure as minister to catchment
20 management authorities and water corporations about your expectations in the context to Traditional Owners?

THE HON. HARRIET SHING: Yes, in relation to Traditional Owner progress against Water is Life, and that is required to be accounted for in annual reporting but
25 also in regular reports to me. This action that's set out in Water is Life is about those partnership agreements so that is an additional step in that process. As far as legislation is concerned, CMAs and authorities are bound by the way legislation operates. These are equipped to do that, that is their job. They operate, as I said, at arm's length from me.

30 The other part of this, though and this is about the power asymmetry and it is about the information imbalance, that Traditional Owners need to have and deserve to have access to information about what the system is including as it changes, including as any reform might be introduced into the system. And that's one of the things we are
35 trying to do with the future opportunities for unallocated entitlements, is to make sure that Traditional Owners are aware of what is - what is available and then to move into, for example, the section 51 licence process. And as I said, we have got 10 on foot at the moment under that framework.

40 **COMMISSIONER LOVETT:** And does it trouble you, Minister, that there's no Traditional Owner governance mechanism oversighting a strategy that you ask the Traditional Owners to work with you to develop and design.

THE HON. HARRIET SHING: To develop and design a strategy or a legislation?
45

COMMISSIONER LOVETT: That's right, another strategy. Water is Life, so it is a government strategy.

THE HON. HARRIET SHING: Yes.

5 **COMMISSIONER LOVETT:** You have so many nation statements and people contribute to go that process but there is no governance. What is the governance structure overseeing the implementation?

THE HON. HARRIET SHING: That was in fact one of the objectives at 12. So -

10 **COMMISSIONER LOVETT:** Yes. That's right, I know we articulated it before and there's been advice from the department about doing things differently. But again, we have - I think we are falling into the trap of government telling government how good they are.

15 **THE HON. HARRIET SHING:** Yes.

COMMISSIONER LOVETT: That is what I am trying to get to here. Government looking at itself and going, "Great, we are doing really great on implementation." Again, if we are about self-determination, transferring power resource and authority
20 and actually asking the Traditional Owners what do they think, how the State's doing around the implementation. It is not there.

THE HON. HARRIET SHING: I can tell you from what I have heard directly from Traditional Owners, really badly.
25

COMMISSIONER LOVETT: Yes.

THE HON. HARRIET SHING: And that is the polite way of putting it. I think what you have raised, though, around an opportunity for that governance to be built
30 in beyond this implementation snapshot, beyond item 12, and how that might work to guide reform, again in that way that says, "What are we doing to co-design, for example, legislation?" And there are going to be Traditional Owner groups, I can imagine, who will not want to be part of a legislative process because of what that means to essentially negotiate within a system that is not accepted.

35 But if there is a model, without the consultation fatigue that I have heard a lot about today, and that I hear a lot about regularly, what does that mean to again work towards reform, particularly in the space where we might have large volumes of water that might be able to be deployed in a way that Traditional Owners can have
40 real control and ownership and management of, in caring for Country.

COMMISSIONER WALTER: But we are nowhere near that at the moment, are we?

45 **THE HON. HARRIET SHING:** Well, that's what I am suggesting this might be a way in which we can get there and get there faster, with the volumes that might be available for that framework.

COMMISSIONER LOVETT: So this morning, Minister, in the evidence, just keeping with this kind of lack of governance for me, Brendan articulated a strong aspiration, and I am not asking you to agree solely on this model, but the principle of it, which is Traditional Owner authority. So we have got a lot of authorities around us, and as I said the other day, we are overregulated, no one else is going to be regulated as much as us, and we have got a catchment management authority, we have got a water authority, just in a water context - we can go into land but let's not do that; we will be here all night. I know you said you've got all night; you said that earlier. But the point I am making here is picking up on what you said before, you'd be open to meaningful engagement with Traditional Owners on what some kind of authority in the water - authority of advice to you in the water sector, moving forward.

15 **THE HON. HARRIET SHING:** Formal or informal advisory processes. Again, I would welcome an opportunity to hear about what that might look like in a way that doesn't exhaust people further.

CHAIR: The reality is, though, that our people are exhausted.

20 **THE HON. HARRIET SHING:** Exactly.

CHAIR: Traditional Owners are expected to go to one meeting, and it might have 12 agenda items about different things. If that is the way the government keeps doing business with Traditional Owners, it is not going to work. The government's got to change the way it's doing things in this new space for the government. If the government's going to Treaty, they have to think about doing things differently from previously. We are not talking about staying under the monarchy. We are not talking about staying - you know to hear today that water belongs to the Crown still. I mean it is an abomination to hear this and it is very hard.

I understand, you know, there's no Republican movement at the moment, I understand if government doesn't change, there will be no change. I mean we have been doing this for 40, 50, 60 years, talking, to get to this table. This happened because people that have died did this, talking, talking, talking, from all over Australia, from various - and they didn't have government support. They had other people and they did have allies, many non-Aboriginal allies.

40 But to me, I am quite distressed in this last couple of weeks about seeing the government expects things to stay the same in the same model that they operate. You can't do that in this space. It is almost still in the welfare space, and that is the big problem. There has to be a change in the headspace. You have to have the right staff working -

45 **THE HON. HARRIET SHING:** I agree.

CHAIR: - in these spaces, and we need - I mean, reading the Water is Life outcomes and actions, my mind just boggles at looking at that document. I am sorry. It is very difficult to think that we can't get past that. I can't see Traditional Owner voice in this document. I know you said it's a government document. But if it is going to be for
 5 our people to gain some access to water, we will be sitting here in another committee, hearing this same sort of response. It is just not the right way to go about it if you can't change the way you do business as well.

THE HON. HARRIET SHING: Can I propose something that might address some
 10 of the issues that you have raised, noting the exhaustion, noting the lack of progress, noting the lack of transparency or confidence in what is changing in a system that doesn't work, where I can provide a progress update as things move on from here to you around these items that we have talked about today. Because of the fact that things are ongoing, it is important to be able to have a context view about how things
 15 are moving, to perhaps be able to work into what further advisory work might work and how we can resource that, how we can remove and reduce the burnout, how we can make sure that young people are part of this process.

I'm - I'm keen to make sure that from today and from this table that I am sitting at,
 20 there is work to do that involves this process, because of what it does to bring together all of the issues that you have talked about that you have heard, not just over recent weeks, over - it is over decades, as you point out, and that within that a discussion about the reform and about the other work that, Commissioner, you have raised, might be something to perhaps give a measure of clarity to around what we
 25 are doing. Just for your consideration.

COMMISSIONER LOVETT: Minister, do you think - sorry, do you want to respond?

30 **CHAIR:** No.

COMMISSIONER LOVETT: Minister, do you think you mob manage water well?

THE HON. HARRIET SHING: I think for certain interests, we manage it very
 35 well.

COMMISSIONER LOVETT: Yes. What about water quality? Let's just go there for a sec. We're not talking about consumptive water quality.

40 **THE HON. HARRIET SHING:** Yep. Yep.

COMMISSIONER LOVETT: Water quality running through these streams, and maybe before you answer, I might just lift this one up. *[Displays jar of water]* This was taken today from the lagoon. We heard during the Welcome we heard Aunt over
 45 there and sister girl over there, who also has ties to Wurundjeri Country and her Country up here, about the importance of water, just took a little sample there. There are animals drinking that. Just wanted to sit that with you before you respond, please.

THE HON. HARRIET SHING: I think the quality of our water has been devastated over generations. I think when you look at one of the most modified river systems in the entire world, there has been a move away from the flows that have made and kept water Country healthy. I think we've also failed to have systems of regulation, quality control, oversight, of accountability for the quality of water or for the way that waterways and rivers are treated. We have seen some progress in improving the health of some of our waterways. This is not one of them. That - for the record, what you are holding is a jam jar that is full of green water, with sediment through it, if I am seeing things correctly.

COMMISSIONER LOVETT: This jar was clean this morning. So straight out of the water, straight out of the lagoon.

THE HON. HARRIET SHING: And it does sustain animals and it does sustain plant life, and the grandmother trees that Brendan talked about today and the mother trees and the daughter trees are all needing this water and relying upon it, and -

COMMISSIONER LOVETT: Not this water; the water you are talking about is not this water, but a different water, yes? The quality of it.

THE HON. HARRIET SHING: They need better quality than what is there at the lagoon.

COMMISSIONER LOVETT: That is what I am talking about, Minister.

MS McLEOD SC: Do you understand what percentage of Victorian waterways are under environmental stress?

THE HON. HARRIET SHING: I don't, I am sorry. I am happy to, again -

MS McLEOD SC: It would be a significant number, 80 or 90 per cent.

THE HON. HARRIET SHING: Yes. As I understand it, it is within the 80s, yes.

COMMISSIONER LOVETT: I just wanted to pick up one point, sorry, counsel. The reason why - another reason why I bring this up, is coming back to - we are not managing this water. Our people have got no say. They've got no say, very limited say in the management of water. Our people would not allow this. Uncle Brendan Kennedy and many other Traditional Owners today, who is the boss? Country is the boss, we would not allow this to happen.

THE HON. HARRIET SHING: Yes.

COMMISSIONER LOVETT: We would not allow this. We have got no say in the water sector really. Inclusion. We are in a self-determination era towards a pathway to Treaty and we are talking inclusion, we are going to include you, asking the

catchment authority and Traditional Owner groups to include us. How are we on a pathway to Treaty if we can't be confident - we can't be included, let alone transfer power and resources? That is why I keep going on about governance and legislation, because that is what changes. That is what sets regulation. It stems from legislation, the regulation happens, that is where the power imbalance is. We are not included, and I understand your point, Minister, but not to diminish our people's aspiration that some of the people don't want to be a part of the legislation, but unfortunately the reality is that that is the governance piece that we are not a part of. That is why we can't generate wealth and prosperity, because we are shut out of that system. The only time we are included is when legislation is made about us, like bail.

I keep coming back to that. 2016, the government knew in making those bail reforms that it would have a disproportionate impact on our people's lives and we lost people in custody, people connected to this area here, that is why I bring it up, family ties, my own family members passing away in custody. You know, we are not included in the governance. We are always fighting for our rights to be recognised and seen and upheld. You know, that is why I bring this up.

I go to my earlier point, Minister, about the importance of having authority in the process. You know, we always don't want to be on - like, doing the low-hanging fruit jobs, you know, it is tough. We don't own anything, we don't have anything, that is another thing that was highlighted, you know, the Minister for Aboriginal Affairs, about the freehold title our people hold. Practically none. No disrespect to our people's fight, hard-sought Native Title and Traditional Owner Settlement Act, and we have hardly touched on the issue around the lack of rights we get. We should be thankful for the Traditional Owner Settlement agreement, at least we have got something. What do you mean, at least we have got something? It hasn't generated the prosperity that our people are looking to achieve. Why should we be thankful for that?

I am not taking away from those mob who have gone through the processes, exhaustive processes, but they are colonial processes our people have had to go through. And the trauma our people have to go through in fighting each other and disagreements, further trauma while everyone sits back and just watches us fight over crumbs, crumbs, Minister. How do we prosper? We heard today, more billions and billions of dollars that we are missing out on, 6.6 was in 21/22. How are we going to be able to, you know, prosper?

And we are worried about engagement fatigue. We ain't going nowhere, we are going to keep fighting and being resistant. You know, it is what we are - not just about fighting Gunditjmara. Everyone is fighting hard. We have the fight in different ways, sitting here and articulate ourselves, using whitefella terminology and tongue. You hear Uncle Brendan speaking in language, you heard Aunty Vicki and Wurundjeri speaking in language, resisting. 2010, we get Traditional Owner Settlement Act, but we hear today, 2007, uncouple land from water, knowing pure well there was conversations happening about Traditional Owners getting access to land back. So people are ahead of the game. You can only assume through the

relationship that we have with the State and the government that we further get shut out. Okay, I will give you some land back, it's not freehold, but there is no water entitlements, but everybody else.

5 We are hearing about the billions of dollars that goes to irrigators every year, but then we don't see billions. We don't even see millions. We just see cents. It is just - like, it is just unfathomable to sit here and continually look other people in the eye when we go and engage with them, yes it is our job, but you see the trauma in their eyes, Minister. It - you know, again, how are we going to be able to transfer power and resources? We don't have to wait for Treaty. Treaty is an important vehicle and a
10 mechanism. Treaty is about a new relationship moving forward once that is signed. That doesn't eliminate government's role in working with our people. We have got cultural rights. But we also got human rights, and human rights fall into service delivery space. Cultural rights is about transferring our power and resources back to
15 us so we can make decisions on land, water, environment and all of those other things. That's what cultural rights is about. I just wanted to make that point. It is water quality. It is water; it's not quality. It is water.

Ms McLEOD SC: Commissioners, I did have other questions, but I have noticed the time and that would seem an appropriate place to finish. I would just ask the minister
20 whether she had any response to the Commissioners' comments and anything you wanted to say in closing.

THE HON. HARRIET SHING: We are facing the reality of the devastation of
25 multiple decisions and systems of injustice that have perpetuated dispossession, that have demonstrated fundamental disrespect, that have denied voice, recognition, influence and power, and the evidence of that is the volume of money in the system for irrigation, for purposes that do not explicitly include cultural water. We have, as governments, expectations that are enormously burdensome for First Peoples. We are
30 continuously asking and inviting your perspectives, suggestions and input. That is work that continues to exhaust and fatigue and frustrate the processes of better outcomes.

I have thought very carefully about what I can do to round back to my opening
35 remarks about doing better. One of the points of change for me is sitting here at this table while we gather the aggregate of generations of injustice and inequity and the deprivation of even the space to be part of discussions around legislation, around regulation. But beyond the formal structures of the legislation that vested power through sovereignty in the Crown, there are cultural blocks, within organisations, I
40 mean, to create and to support the pathways for First Peoples to be in a position to influence better outcomes, whether that's in departments, in agencies, whether that is on Country, whether that is through economic opportunity and participation.

I am really grateful for these uncomfortable conversations. The one that we have had
45 here today is another example for me, for the department, for DEECA, across a number of portfolios, but also for Government and the Commonwealth to do better. But the task that I have comes back to action, but it comes back to action that takes

us in a better direction, rather than action that is about doing the same thing that we have always done.

5 I want to do things better, and I want to do things in a way that is about not just inclusion but about what co-design meaningfully looks like. I am committed to doing that work. I am also not unaware of the fact that it is going to be difficult for government, but as I have heard on the ground before on Country before, these are not the problems that First Peoples should be fixing because they are the problems the government created.

10

I would like to have an opportunity to be part of fixing those problems without causing further damage myself, and I would like for that to include as many difficult conversations as are needed for that to happen. Thank you for the time and the space today. Thank you for all of the perspectives of people I have spoken with here today, 15 but people who have also put in submissions. I am very prepared to continue this discussion whether in an informal or a formal setting, and to provide further information to the extent that it might assist your work as Commissioners in the next steps from here to make good on the things that I have talked to here today, that you have asked me about today, that you have demanded of me today. That is the extent 20 of it, counsel. Commissioners, thank you.

MS McLEOD SC: Thank you, Minister. One of the things you undertook to do was to provide an update on the implementation of Water is Life.

25 **THE HON. HARRIET SHING:** Yes.

MS McLEOD SC: Would you also be willing to provide updates of information of the sort we have been talking dollar terms, volumes, allocations, as part of the Treaty process on a continuous basis?

30

THE HON. HARRIET SHING: Yes. We have got some licence applications that might be subject to confidentiality just because they are in the system, yes.

COMMISSIONER LOVETT: I have a couple, if that is okay. Minister, do you see 35 Traditional Owners as a priority in the water sector?

THE HON. HARRIET SHING: Yes.

COMMISSIONER LOVETT: Can you just elaborate a little bit more on what - 40 yes, that point.

THE HON. HARRIET SHING: Traditional Owners, as we heard this morning, are best placed to care for Country. And when we have healthy Country, we have healthy communities. And when we have healthy waterways, we have the best 45 possible opportunities to be able to support everybody and to start to continue, hopefully, that work on healing across every measure of what that means.

COMMISSIONER LOVETT: Minister, you talked about cultural blockers, I think it was the word you used just a minute ago, when you were referring to, I guess - assume you were referring to the public service, and also the sector, not so much our people -

5

THE HON. HARRIET SHING: I was not talking about, no -

COMMISSIONER LOVETT: I just wanted to be clear, not our culture.

10 **THE HON. HARRIET SHING:** No.

COMMISSIONER LOVETT: Whitefella culture - organisations.

THE HON. HARRIET SHING: Yes.

15

COMMISSIONER LOVETT: My question to you is, you talked a lot about reform and aspiration, and our people are looking for actualisation, and aspiration turned into actualisation. My question here is, what leadership will you show to enable those reforms to be achieved, some of which you have shared here today? What leadership are you going to demonstrate to derive accountability and delivery of the plan, but also some of the things you have committed here today in the sector? Because the obligations and statements of expectations and obligations, it's going so far but it is barely touching the sides. We have heard that loud and clear today. The question is, what leadership are you going to show?

20

THE HON. HARRIET SHING: There is a few layers on that.

COMMISSIONER LOVETT: I have got all night, respectfully.

30 **THE HON. HARRIET SHING:** Firstly, there is leadership within government, and the place that I occupy within government. That includes my colleagues who have a range of ministerial portfolios, many of which intersect very clearly with everything we have talked about here today. The work on other levels of government is also really important. I have advocated very strongly for a meaningful engagement, for example, from the Commonwealth on First Peoples' water and what that means rather than a tick-a-box situation to deliver something meaningful to create to build a measure of trust where trust is either incredibly fragile or broken entirely.

35

40 It is also then about leadership within communities, and I will start with the whole of Victorian communities first. That involves stepping in to correct the creeping misinformation that is often at the heart of conversations that involve restorative process. That involves making sure that when we talk to what benefit for Traditional Owner outcomes looks like, it is not then met by a response of "What are we losing?"

40

45 That is a conversation that I am having and continuing to have with irrigators, with farmers, with people in communities who think that because of a range of, really, inbuilt prejudices, the prejudices that you are exposed to, that you live with, that you

45

know, that if there is a change for the better it will mean that they lose out, and the final and most important part of the leadership that I think sits with me is that of discussion, engagement, co-design, and meaningful work, meaningful outcomes with Traditional Owners. That needs to take a variety of forms, guided by what
 5 Traditional Owners are telling me is of the most significance to them in terms of getting outcomes. That is about me sitting and, as I said at the beginning, creating the space for that to happen.

10 That comes back to the advisory point that you made earlier and to the work of what that looks like to have that direct conversation. There will be a variety of forms that that takes. But that to me, perhaps creates an opportunity for leadership not of that conversation but of the process that I might facilitate for that to happen for that transfer of power, for that shared power.

15 **COMMISSIONER LOVETT:** Minister, you talked about - you made a really good important point there. Going in and meeting with the Commonwealth about Traditional Owner expectations. Now, from a credibility point of view, if we don't have governance and accountability over in the State of Victoria around Water is Life, then how can we as Victorians speak with authority, hold authority in those
 20 conversations with the Commonwealth when we haven't locked down our business here? Can you just share some thoughts on that.

THE HON. HARRIET SHING: We haven't locked down our business here; you're right. The Commonwealth – it is ironic, isn't it, Commonwealth not being common
 25 wealth.

COMMISSIONER LOVETT: We know it.

THE HON. HARRIET SHING: \$40 million in 2018 and nothing was done with it.
 30 Victoria advocated very strongly for something to be done with it. The statements that were made recently were that the \$40 million should be actually deployed, used, then it's gone up to \$100 million as of late last year. Whether that leads to results remains to be seen. \$100 million based on those numbers is a really small amount. But it has to be something that leads to action, and it also has to be about the work
 35 that I bring to the ministerial council.

I have been calling for another ministerial council for water ministers for months now. The last two have been cancelled. I have been calling for an opportunity to engage meaningfully across basin states in particular, the Murray Darling Basin
 40 states, across Queensland, New South Wales, the ACT, Victoria and South Australia, to have that discussion and that meaningful engagement with First Peoples, but then also to have it around a ministerial council table. We have performed badly in Victoria. The Commonwealth has not performed. And needs to.

45 **COMMISSIONER LOVETT:** Minister, do you make a commitment here today, in those meetings – when you do get a meeting, that Traditional Owner rights and interests needs to be an agenda item at every single meeting. You are discussing

water and the quality and the management, economic, cultural purpose, environmental purposes, we can keep going on, but I am asking here that it needs to be on the agenda at every meeting.

5 **THE HON. HARRIET SHING:** I have raised –

COMMISSIONER LOVETT: If you can get a meeting.

10 **THE HON. HARRIET SHING:** I have raised it with every single minister as part of the ministerial council. I will continue to do so. I have raised it with the Commonwealth, the department has raised it with the Murray Darling Basin authority and with the basin officials group. I am not going to stop doing that. I talked – and we are talked extensively about Water is Life and what it means, what it is doing–, more fundamentally what it is not doing.

15 My very first ministerial council, I took a very big pile of copies of Water is Life to the ministerial council, and it was before the meeting started almost a revelation that this was something that had been pulled together. But it is also something that I had to explain needed many, many years to do, because it hadn't been done before. And that a process of consultation of a matter of weeks, for example, as proposed, for nation-wide reform isn't going to cut it.

20

So the answer to that is yes, and I have done it and I will do it, because it needs to be done because water, as I have said and as everybody knows, doesn't actually have regard to the boundaries of states and territories.

25

COMMISSIONER LOVETT: Minister, we have talked a little bit earlier about - I have two questions, sorry, everybody, two more, but they are important. The lack of Aboriginal people in executive roles and water and catchment group - what was that figure again? 23, 24, probably 23 now I have said that. The point I am making anyway - we will get that figure.

30

THE HON. HARRIET SHING: Let me see.

35 **COMMISSIONER LOVETT:** 21, 21?

THE HON. HARRIET SHING: Yes, 21.

40 **COMMISSIONER LOVETT:** Uncle Brendan asked a little bit earlier about having an advisor role to yourself. Still work to do in other areas, and I have been getting more Aboriginal people in executive roles, but water, you have had a policy since at least 2016 in Water is Life. I know there is been other references to 2004 but the advocacy has been there from our people. We need to see also opportunities and investment in our Traditional Owner corporations and groups, but also investment in

45 Aboriginal leadership so our people can brief you direct who also work in the department.

We have seen a systematic barrier to our people, around everyone giving advice to us never from us, everyone talking about us internally, externally but we don't get the chance to brief the ministers directly. That is from a bureaucratic point of view. So stronger commitments, and I understand you don't employ executives in the

5 department, that is a secretary job apparently. There should be more done in the water space. That is just internally, then I guarantee, I am confident in this, that there is no Aboriginal executives, men and women, in the water sector. So that is in catchment management authorities in executive roles, or water corporations. Would there be any? If maybe one or two.

10

THE HON. HARRIET SHING: Other than boards, you mean.

COMMISSIONER LOVETT: No, no, I am not talking about boards. I am talking about in these groups, in these water corporations, catchment management

15 authorities, our people are employed in the most junior roles that is what I am trying to call out here. We are not in decision-making roles, we are at the table at the end of the lunch table. That is the table we get to be at. Might get to share some lunch with everyone, but not the table where the decisions are made, with that big door shut and us in there owning our authority and our advice and our being able to be the

20 professionals that we are. Strong and articulate for our blackfellas, being able to contribute in any area. We have got the capability. But we are never invested in to have the capacity to be able to go into these different spaces, so more work needs to be done. A lot of non-Aboriginal people are doing really good work, but at the end of the day we want to see our people in jobs, on Country, but also in these departments

25 as well.

One last one. Environmental contribution levy, we have heard from others, ministers, about community benefit sharing. I think the water sector, we have our own recommendations around where we land and so forth, but we haven't really talked

30 too much about economic prosperity in this space. We have done a little bit. A lot has been about cultural flows and other parts of the business, because there are no economic opportunities through this space. It's been articulated, particularly around the buybacks, we're not at the table. Again we're not at the table, we are at the lunch table; we are at this table.

35

I just wanted to ask for your responses around - you know we have heard from other ministers around community benefit sharing and the prosperity of the billions of dollars that have been articulated here even that one the financial year, 1.6 billion we have seen none of it, I understand treaties are coming. I wanted to ask you for

40 remarks around that. It is really important, a lot of levies, but we are not included.

THE HON. HARRIET SHING: So I will start with the amount of the environmental contribution. It is about \$693 million. This is again - it is basically then returned to consolidated revenue which is basically the central bucket of money,

45 then distributed out through a range of other programs. More needs to be done around economic participation and around economic opportunity. And that is where, again, the difference between cultural flows and cultural water, similarities, yes, but

differences also and environmental water. Where water is returned to Traditional Owners, it can be used for any number of purposes, whether that is leaving it in the waterways and the rivers, or whether it is - and this why, again, it's about making sure there is a place of (indistinct) I think you talked about this with the Environment Minister and the work of Parks Vic to create this place, dispossession meant there hasn't been one. We can and indeed we should provide opportunities for economic participation to be part of return of water. That is where reform is a piece given significant overlap with environmental outcomes because of the health of Country and what that means. I think there are opportunities, and I think we do need to talk about what that means for Traditional Owners where we have overlap with economic opportunity on the one hand, caring for Country and environmental benefit on the other. These are not things that sit in isolation to each other when it comes to knowledge and wisdom when it comes to an understanding - an innate understanding of the fact that Country can be cared for and, as has happened for - as Brendan said today, 100,000 years, being able to make sure that there is benefit for everybody in a range of different ways, and I think in a contemporary context that is also about economic opportunity and it can be.

COMMISSIONER LOVETT: Can't be self-determining if we don't have the money to be able to do it and that is about power and resources, thanks.

MS McLEOD SC: The only money on the table for the purchase of those cultural and economic water rights is the 100 million from the Commonwealth.

THE HON. HARRIET SHING: Save for the fees and charges on unallocated water in those section 51 licence, the 10 which are in the mix at the moment.

MS McLEOD SC: Which lasts for up to 15 years.

THE HON. HARRIET SHING: Yes, but which are then extended unless there is a reason not to.

MS McLEOD SC: So that \$40 million was promised with bipartisan support in May 2018, and since that time before the change of government there was - was not paid and there was talk about repurposing it to fund non-water acquisition-related activities.

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: That 100 million is yet to be distributed.

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: Minister, do you agree that this is the only real, tangible opportunity currently on the table for First Nations peoples to acquire these water rights?

THE HON. HARRIET SHING: Through buybacks, yes, but as I said, through other means, there are applications in train.

MS McLEOD SC: Through unallocated waters.

5

THE HON. HARRIET SHING: Yes.

MS McLEOD SC: Of which you have currently distributed 4.5 gigalitres.

10

THE HON. HARRIET SHING: Yes.

COMMISSIONER LOVETT: I just wanted to say one other thing. We have discussed a lot of business today, Minister, but also people listening in as well. So we do have 13YARN for mob to be able to contact if they need to have yarns with our counsellors and so forth as well. I just want to make that available to people as well. Because we have talked a lot about sorry business, trauma, massacres of our people, deep trauma and continued trauma that we are facing here today. It hasn't got much better, as you have articulated, Minister. I just want to make sure that our people have that opportunity to be able to connect with our team as well.

20

So yes, it is really important that - I know it is traumatising for our people to keep hearing this, this is the job that we are tasked to do in putting the true history of Victoria on the public record, and we've encouraged a lot of people to be able to come forward and we want to continue for people to come forward and share their truths with us, because there is still so much that we are still uncovering through these processes as well. So I just wanted to recognise the people listening in as well. It's really important that we take time to think and process and connect with our people as well. Yes.

25

CHAIR: Thank you, Commissioner Lovett. Minister, thank you, thank you. I also just want to make another comment to you about - you used the term First Nations peoples' expectations. We do have expectations that we don't continue to miss out on anything that is new that is for all Victorians. Often, we are seen as separate, siloed out and I think that's something that needs to be changed, and I do think there needs to be a cultural change within government. It's too much of the silos, too much of the colonial bureaucracy, but I won't go there.

35

And the other thing, of course, we have seen racism, not hidden any more, about our people. It is out - it is out in the public view and we have many people who have contributed to trying to make change since the referendum, personally, where they were advocating for change in the space of hoping that there might have been a different result about our voices. Well, there hasn't, but we are still going to speak up, of course. But the people who are not able sometimes to do that, they also need support. And as Commissioner Lovett mentioned, the work is traumatising, but it is historic. Even today is historic.

45

And, Brendan, I'd just like to thank you again for the hospitality you and your family and your people, locals here at Robinvale, have shown us, and the words that you gave to us this morning. I say many times that this is the most important work that we as Commissioners will ever do, and we are very aware of that, that it's such an
 5 important time in the history of this statement. I would also like to say that all the people that support us, and I'd particularly like to thank our staff who have set up this particular hearing, because having a hearing regionally is an historic moment for the Commission.

10 We have visited other places formally as the Commission but not had a hearing. So I want that noted, that we - and we who are river people, you know, I had such joy with the people I have met today, making the connections and knowing the connections, and I am grateful that we are in this space.

15 I also want to just say generally to the Robinvale community and also those who turned up - we had people who came just because we were here to hear what the Commission is about - I am very grateful and to those who may be online, if they are still there, again, thank you. Thank you for watching. But just - but trying to talk as well to the people of Victoria indeed, beyond, because truth-telling is probably - it
 20 will go on. It is not going to stop, and I hope that is another thing that you can influence within the government that it shouldn't stop with the end of this Commission, whatever form it needs to be continued, so that people can come out and have a space to tell the story of the First Peoples of this state, and I think that is a really important thing. If we can't get that on the agenda forever, I think there is
 25 something wrong. So thank you all and thank you everybody for their contribution today.

MS McLEOD SC: Thank you very much, Chair. I do have a tender of some documents if I can attend to that quickly. There are seven documents referable to
 30 Uncle Brendan, 10 referable to Minister Shing, and two other documents in accordance with the tender list that has been shared amongst the parties. And we too express our gratitude to, as I said this morning, the community and solicitors assisting for assistance with the setup, particularly and other members of the Tati Tati community who set up the beautiful hearing room and out by the lagoon, the
 35 marquee and preparation for the ceremonies and our hearing out there. We are very, very grateful.

CHAIR: Thank you. Thank you, counsel.

40 **MS McLEOD SC:** Thank you, Minister.

CHAIR: A special thank you to counsel too, who helped with preparing for today, KWM staff as well, thank you very much for what you have done too. Very cold this morning, a bit windy, but thank you all, and we adjourn and close this session.

45

MS McLEOD SC: Yes we will return on Friday morning in Melbourne.

CHAIR: Reconvene Friday morning. Yes. Thank you and thank you, all of you.

<THE HEARING ADJOURNED AT 6.06 PM